

**Localising Peacebuilding in South Sudan? A Case of Transitional
Justice and Reconciliation**

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Abstract

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Despite the signing of the 2005 Sudan Comprehensive Peace Agreement that ended the two decades of South-North Sudan war; and the 2015 Agreement on the Resolution of the Conflict in South Sudan, to end the current civil war, armed conflicts persist in South Sudan. Two key inadequacies of the liberal peacebuilding model, applied to address modern conflicts in Africa and across the globe are its insistence on international justice instruments such as the International Criminal Court, and the failure to recognize the role of local approaches and to incorporate them into peacebuilding intervention policies. This has resulted in failures to address the grievances and bitterness of war affected people and to reconcile divided communities. This study examines the potential and limits of applying local approaches to post-conflict peacebuilding in South Sudan. Based on empirical data obtained through qualitative case study conducted in South Sudan over five months in 2016, the findings reveal that despite the wide use of local institutions and justice mechanisms, many challenges exist, that pose serious difficulties in solely applying these strategies to transitional justice. However, for the liberal peacebuilding model to address the root causes of internal conflicts and build sustainable peace, local strategies could provide a significant complementary contribution, since dealing with the past entails more than retribution and truth seeking. The study has wider

implications in practical and theoretical considerations for ongoing armed conflicts in Africa and other parts of the world.

Declaration

This research work is my original and has not been submitted to any PhD programme in any University.

Martin O Lino Agwella

Author_____ Date_____

This research project has been submitted for examination with my approval.

Dr. David Harris

Supervisor_____ Date_____

Dedication

This thesis is dedicated to my late brother and sisters *JAMES LINO AGWELLA*, *LILY LINO AGWELLA*, and *REBECCA LINO AGWELLA* and my parents who inspired my work in many ways.

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Abbreviations and Acronyms

AAA	Addis Ababa Peace Agreement
ANC	African National Congress
ARCSS	Agreement on the Resolution of the Conflict in South Sudan
AU	African Union
AUCISS	African Union Commission of Inquiry in South Sudan
AUHIP	African Union High Level Implementation Panel
CAVR	Commission for Reception, Truth and Reconciliation in Timore Leste
CPA	Comprehensive Peace Agreement
CTRH	Commission for Truth Reconciliation and Healing
DC	District Commissioner
DDR	Disarmament, Demobilization and Rehabilitation
DoP	Declaration of Principles
DRC	Democratic Republic of the Congo
DUL	Durham University Library
DUP	Democratic Unionist Party
DVD	Digital Video Disc
GOS	Government of Sudan
GRSS	Government of the Republic of South Sudan
HCSS	Hybrid Court of South Sudan

HIV	Human Immunodeficiency Virus
HLRF	High Level Revitalization Forum
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
ICTJ	International Centre for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IDP	Internally Displaced Person
IFI	International Financial Institutions
IGAD	Intergovernmental Authority on Development
IJR	Institute of Justice and Reconciliation
IOM	International Organization for Migration
JMEC	Joint Monitoring and Evaluation Commission
JPA	Jonglei Peace Agreement
KI	Key Informant
LRA	Lord's Resistance Army
NA	Native Administration
NCP	National Congress Party
NDA	National Democratic Alliance
NGO	Non-Governmental Organization
NIF	National Islamic Front

NSCC	New Sudan Council of Churches
OAU	Organization of African Unity
OCHA	Office of the Coordination of Humanitarian Affairs
OLS	Operation Lifeline Sudan
PoCs	Protection of Civilian Site
PPP	People to people Peace Process
QIP	Quick Impact Project
RCA	Reparation and Compensation Authority
RSS	Republic of South Sudan
SAD	Sudan Archive Durham
SAF	Sudan Arm Forces
SCBC	Sudan Catholic Bishops' Conference
SCC	Sudan Council of Churches
SPLM/A	Sudan People Liberation Movement/Army
SPLM/A-IO	Sudan People Liberation Movement/Army-In Opposition
SSDF	South Sudan Democratic Front
SSLA	South Sudan Law Society
SSLM	Southern Sudan Liberation of Movement
SSR	Security Sector Reform
SSWA	South Sudan Women Association

SWAN	Sudan Women Association in Nairobi
SWVP	Sudanese Women Voice for Peace
TC	Truth Commission
TRC	Truth and Reconciliation Commission
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
UNMIS	United Nations Mission in Sudan
UNMISS	Nations Mission in South Sudan
UP	Umma Party
US	United States
USA	United State of America
YCS	Young Christian Student

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Chapter One

Research Introduction, Methodology & Design

1.0 Introduction

This study focuses on local peacemaking and contemporary armed conflicts in South Sudan. The aim is to explore the potential utility of local approaches to the resolution of modern conflicts and whether the mechanisms practised by the Dinka and the Nuer ethnic communities can be applied to the current hostilities in South Sudan to build sustainable peace. It seeks to understand the role local peacemaking procedures have played in local settings, and could play in global peace efforts, with special focus on post-conflict justice and reconciliation. The focus for investigation and analysis concerns the period after the 2005 Sudan Comprehensive Peace Agreement (CPA) up to and including the 2015 Agreement on the Resolution of the Conflict in South Sudan (ARCSS). The study also analyses the transitional justice policies provided in the agreements, or lack thereof, to deal with the legacy of the wars.

1.1 Genesis of the study

This study was motivated by the desire to fill a gap in knowledge and to understand how local peacemaking initiatives can interact with the dominant liberal peacebuilding strategies which are applied across a wide range of post-conflict settings to deal with violent conflict and to build peace. As a South Sudanese national, my special interest in the strife in South Sudan and a passion to work for peace have developed based on my personal experience of war. More than half of my life has been spent in war situations; I was born during war and raised in war. From 1986, for example, I was separated from my parents for a period of 15 years without any communication. When I finally visited my parents in a refugee camp, my own mother could not recognize me due to the long separation.

Overall, my personal experience in peacebuilding work across East Africa, particularly in Sudan and South Sudan before and after the signing of the 2005 CPA,

inspired the study. I oversaw and was a member of the Board of Governors of Bakhita FM Radio; a community radio station that was established by the Sudan Catholic Bishops' Conference (SCBC) in 2006 to work for peace and reconciliation in South Sudan. In 2010, I set up a sub-regional peace and reconciliation forum, championed by the Young Christian Student (YCS) Movement, which brought together students from South Sudan, the Sudan, Uganda, Kenya and Tanzania in an attempt to create a platform for the exchange of ideas linked to the search for solutions to conflict-related problems and the cross-border issues facing the sub-region; and to ascertain how students and young people in the East African region could play their role in regional peacebuilding and reconciliation. I also organized peace education programmes for young people in schools and Churches.

Between 2012 and 2013, I conducted a piece of academic research on peacebuilding in South Sudan. This was undertaken as part of the requirements for a Master's Degree in Peace and Conflict Studies at the University of Bradford. In that study, I examined the role of the Church in peacebuilding in South Sudan, and established that the Church played a key role in conflict resolution and reconciliation, in advocacy for peace, as well as acting as a humanitarian and development service provider during the two decades of the civil war. Despite the absence of any functional government institutions or the engagement of institutions such as the UN and other agencies in most parts of the war-affected Southern Sudan, the Church, as a civil society actor in partnership with local and traditional authorities, was present and helped to make peace among divided communities as well as between the rebel factions.

I also worked in partnership with several NGOs, both local and international, and with traditional institutions which used local mechanisms to resolve resource-based, cross-border and other conflicts through traditional and indigenous action. I was involved, through the Justice and Peace Commission of the Catholic Church in Juba, in the capacity building of traditional leadership for local peace mediation; supporting and training the representatives in the use of peace language during the cross-border peace and reconciliation meetings with their counter-parts from Northern

Uganda, following the Ugandan rebels' Lord's Resistance Army's (LRA) incursions and operations in South Sudan.

My work with traditional leaders, shaped my interest to explore and understand the potential and relevance of local peacebuilding mechanisms, but also challenged and inspired me to ask questions such as: where is the place and role of these institutions in the broader contemporary peace processes? Can these mechanisms be applied to the modern conflicts and if so how and to what extent? These questions have yet to find answers alongside my main research questions. However, it appears that during the Sudan's decades of civil war, South Sudan relied on the efficacy of local initiatives, which had been in use in some form since the pre-colonial period, to deal with protracted hostilities. My view has been that if explored and properly understood, local mechanisms of peacebuilding could be applied in some form, and perhaps as a compliment to international approaches to the resolution of modern conflicts in South Sudan; hence the rationale for undertaking this study.

1.2 Statement of the Problem

In the last two decades peace processes that have ventured to address contemporary armed conflicts in the Global South, and specifically Africa, have insisted on internationally-sponsored practices, such as state rebuilding, good governance, democracy and the International Criminal Court (ICC). But this insistence has consistently led to lack of recognition and incorporation of local procedures in peacebuilding programming. In most cases, these conventional recipes have periodically met with failure (Mac Ginty 2008a).

This Liberal peace model was applied (except for transitional justice instruments), to resolve the armed conflict in the Sudan which resulted in the signing of the 2005 CPA, that ended the twenty years of war between the Government of the Sudan (GOS) and the Sudan People's Liberation Movement/Army (SPLM/A); and more recently, to the 2015 ARCSS, to end the twenty months of fighting between the government of the Republic of South Sudan (GRSS) and the Sudan People's Liberation Movement/Army in Opposition (SPLM/A-IO). However, more than a

decade after the CPA, South Sudan still finds itself grappling with significant political problems related to unresolved issues and the near collapse of the ARCSS that make peace a matter of grave concern. However, unlike the CPA, ARCSS included a transitional justice component and provided for the establishment of a Hybrid Court for South Sudan (HCSS) alongside two other transitional justice mechanisms that will be discussed in Chapter Six.

The choice of peacemaking measures is crucial when attempting to find solutions to any armed conflict. Relevant procedures should consider the people's histories, cultures, and experiences and the specific political contexts which are crucial for an understanding of the root causes of conflicts and which are required for local participation, legitimacy, ownership, and sustainability of outcomes. An over-reliance on liberal peacebuilding models has not yielded the expected results in South Sudan; particularly as, so far, no mechanisms have been put in place to deal with the bitterness felt among war-affected communities.

1.3 Theoretical and Conceptual Framework

The theories upon which my thesis is grounded are a critique of liberal peace theory and an analysis of the African philosophy of peacemaking (*Ubuntu*), together with the key concepts that make up the study: conflict resolution, peacebuilding, local approaches, contemporary conflict, transitional (post-conflict) justice and reconciliation. These are discussed in chapter two of this thesis.

Liberal peacebuilding is premised upon the idea that democracy and a free market economy encourage people to resolve and express their differences peacefully and that this is the best foundation for development and accountable governance (Newman 2009: 39); and that retributive justice is the most effective route to conflict resolution and dealing with past human rights violations. A growing body of research, however, suggests that modern violent conflicts exist within contexts of a hybrid political order (Boege 2011: 432), and increasingly questions the relevance of liberal peacemaking in achieving results within such settings. Critics of the liberal peace model assert that the main shortcomings of contemporary peace processes based

on the liberal peace model are their repeated failure to recognize local approaches and cultural resources of conflict-affected people and to incorporate them in their intervention and practices (Murithi 2008); and to address the bitterness experienced by war-affected communities and the sources that generate it (Gawerc 2006: 437). I concur with the above critiques and argue that the persistence of armed conflict in South Sudan following the signing of the 2005 CPA, after independence in 2011, and after the signing of the 2015 ARCSS is largely due to the failure to recognize, appreciate and incorporate cultural resources in the peace processes, to address the grievances of the affected people and to reconcile the bitterly divided communities.

Conversely, despite growing interest in promoting local approaches in post-conflict peacebuilding, the literature shows wide research gaps. Francis (2012) notes that over a decade of extensive fieldwork in post-conflict societies in Africa, reveals a huge under-researched area as to what happens when war formally ends. Boege (2011: 434) observes that scholarly research and political practice have not adequately addressed traditional non-western approaches to conflict transformation. Similarly, previous research on peacebuilding and local peacemaking mechanisms in South Sudan have marginally dealt with issues of post-conflict justice and reconciliation (Wassara 2007). There is, therefore, limited or no literature in South Sudan with this focus. The academic community will benefit from the study in terms of new knowledge and an enrichment of the peacebuilding literature.

Since the slaving era of the 18th and 19th centuries, the colonial periods from the 1880s, and post-independence civil wars from 1956, South Sudan has suffered significant violence and insecurity. Liberal peace values such as democracy, human rights, rule of law and socio-economic development were alien to common ideas of governance and war time practice. Young (2012: 10) observes that gross human rights violations were committed in South Sudan by all parties in the two-decade civil war which ended in 2005. Interestingly, despite the protracted civil strife which also pitted some communities against each other, the people of South Sudan continued to co-exist. How this was possible in the face of suspicions, inter-communal tensions

and armed clashes perpetrated by the Sudan Armed Forces (SAF) and the SPLA, and by multiple militia and self-defence groups, is yet to be understood. However, coexistence may have in part been possible because of people building peace using traditional and local techniques; and there is indeed evidence of local peacebuilding efforts, notably during the SPLM/A political and armed struggles of 1983-2005. Johnson (2011), for example, noted that it was grass roots peace efforts that attempted to heal the rift in South Sudan following the 1991 SPLA split (I will discuss the SPLM/A split in Chapter Three). This reinforces the point of Barnes (2005), who argues that local civil society groups bring several important qualities for responding to specific cases of conflict.

The long history of South-North wars and inter-communal differences in South Sudan seems to have bequeathed a rich peacebuilding heritage that regulates feuds through various customary mechanisms. These localized peacebuilding initiatives, taking place at both the grassroots and the sub-national levels, have continued since the inception of the Sudan's second civil war in 1983 up to the independence of South Sudan in 2011. But, since the signing of the CPA in 2005 and the country's independence in 2011, the state and other peacebuilding efforts that were employed in South Sudan downgraded native peacebuilding strategies in favour of the dominant Western liberal approaches to conciliation. Moreover, the civil war has weakened the social fabric and left communities polarized, in such a way that any slight provocations arising, for example, from shared use of resources, such as land and water, could spark fresh violent confrontations.

The implosion of South Sudan, with major conflicts before and after its independence in 2011, and the descent of the country into another war in December 2013, despite ongoing peacebuilding efforts, could be mainly attributed to the failure of the predominantly western peacebuilding procedures to take into account and recognize the local realities of the disputes, such as the available resources in South Sudan and the role local endeavours had played in conflict resolution and management since pre-colonial times. However, unless the potential and limitations of grass-roots initiatives is empirically explored and understood, their efficacy (or lack thereof), for

possible application to the resolution of modern conflicts, will remain unappreciated by global peace policies.

I do not assume any preconceived ideas of what roles local mechanisms ought to play. Instead this thesis seeks to explore the opinions, views and experiences of research participants, establishing and validating their voice as to how home-grown approaches work (and do not work), and could contribute to the resolution of modern conflict in the given context. The study focuses specifically on the Dinka and the Nuer peacemaking mechanisms as used in the aftermath of violent conflicts and their possible application to post-conflict justice and reconciliation. The reasons for focusing on the Dinka and the Nuer are; the legacy of the 1999 Wunlit peace and reconciliation conference, which settled the post-SPLA split and violent conflict between the two ethnic groups; and the current conflict which right from its inception, pitted Dinka and Nuer ethnicities against each other.

1.4 Significance of the study

This research intends to make an impact on actors in South Sudan, most especially on grassroots and civil society activists, regarding the question of peacebuilding. This impact includes setting out the relevance, potential, usefulness and limitations of indigenous mechanisms, agencies, and resources of conflict resolution and peacebuilding in South Sudan; and how these can be used to address current strife, particularly on issues of accountability, justice and reconciliation. Peacebuilding requires several different measures, approaches and stakeholders at various levels. Lessons will be learned from the findings for possible application, if found relevant, to address current and future hostilities. To actualize the contribution of this study, the Church, as a faith-based and civil society actor of which I am a part, will use the findings of this research to help establish a training facility for indigenous peacemakers to prepare them in the early recognition of obstacles that threaten peace and provide them with a skill-set for devising ways and means to overcome such problems. This could take the form of arranging opportunities for dialogue, or establishing local councils to address these issues. The wider society would benefit

from the community conflict-management skills and capability, and this, in its turn, would help build sustainable peace in South Sudan.

This thesis also aims to contribute to the current peacebuilding scholarship trend of the “local turn” which promotes emancipatory peace, with new empirical evidence for South Sudan. Local turn in peacebuilding is a wider critical turn in the study of peace and conflict which focuses on the epistemological values of the recourse to localism in conceptualization and execution of peacebuilding (Mac Ginty and Richmond 2013). It is a recognition of the importance of culture, history and identity, and the significance of the local critical agency, and resistance, of the unintended consequences of external blueprints, and of rights and needs in everyday contexts. “It has been much influenced by postcolonial scholarship and by scholars from the global south who are particularly aware of the issues of power relations in peace” (Mac Ginty and Richmond 2013: 769). Policy makers in the international community have also shifted their focus more towards decentralization and grassroots empowerment, including a role for traditional authorities, in their efforts to create a liberal peace (Leonardi 2007: 538).

But why this rise of interest in the local? One factor that helps explain this, is the growing understanding of the complexity of conflict by many bilateral donor states, international organizations and international financial institutions (IFIs); and this has been matched by a growing understanding that responses to conflict must also be multi-dimensional, long-term and flexible (Mac Ginty 2008a: 124). This study will examine whether this upsurge of interest is real or rhetorical. The research has no intention whatsoever, to romanticize grass roots initiatives or consider such a model as an antidote to liberal peace.

1.5 Research Questions

This study sets out to answer the following questions:

Central research question

What is the potential utility of local approaches to the resolution of modern conflicts in South Sudan?

Secondary Research Questions

To what extent can the Dinka and the Nuer justice and reconciliation mechanisms be applied to post conflict peacebuilding?

Objectives

- To understand the cultural institutions of peacemaking in South Sudan, and the methods they apply
- To determine the roles traditional leaders have played in administering justice and reconciliation after violent conflicts
- To establish whether these roles are still capable of serving the same purposes they once did
- To find out the types of conflicts that were settled by local methods
- To ascertain the limits of local peacemaking procedures
- To determine whether the dominant Western liberal peace approaches leave room for local versions of restitution
- To determine whether local initiatives were included in the peace processes that led to the CPA and ARCSS
- To find out stakeholders' perceptions (local and international) about the application of local techniques to transitional justice and reconciliation

1.6 Research Design and Methodology

The main purpose of research methodology is to explain how the research questions can be answered. So, there is always a close association and integration among research questions, research methodology, and method of data collection (Schensul 2012: 71). Based on the required information for my research questions, I used a qualitative approach to generate answers. I needed data that came from the participants' opinions, perceptions, personal views, feelings and experiences which were qualitative in nature. I used a case study design for examining the South Sudan context as a setting for understanding the phenomenon under investigation. Yin (2003: 13) defines the case study as an empirical inquiry that investigates a contemporary phenomenon within its real-life context and under technically distinctive situations in which there are many more variables of interest than can possibly be handled at a time. Local peacemaking approaches are not homogeneous and, given the diversity of cases, I could not deal with all of them in this study, so a case study was a better option for my thesis. The rationale for the choice was that the case study provides a detailed description of the problem under study and allows for in-depth investigation to gain valuable and unique insights, as it focuses on relationships and processes within social settings which tend to be interrelated (Descombe 2003: 32). It is a very useful design for exploring an area where little is known or where you want to have a holistic understanding of the situation, phenomenon, episode, site, group or community (Kumar 2011: 127).

In terms of case types, I used a single instrumental case study for my investigation. Creswell (2007: 73) defines case study research as a qualitative approach in which the investigator explores a bounded system (a case) or multiple bounded systems (cases) over time through detailed, in-depth data collection involving multiple sources of information. As noted above, the inquiry focused on specific ethnic communities in South Sudan as units of analysis: the Dinka and the Nuer. The major weakness of the case study is that findings are not always generalizable to other situations (Leedy and Ormrod 2013: 141). The aim is not to establish how the case findings can be generalized, as every community in South Sudan has its own

traditional and local peacemaking approach, but to understand what conclusions could be drawn from the study to inform such practices in other settings.

1.6.1 Epistemological Approach

I used social constructionist and interpretivist techniques as the ontological and epistemological dimensions of the phenomenon of my investigation. Gergen (1985: 85) defines social constructionism as a perspective which believes that a great deal of human life exists as it does due to social and interpersonal influences; a proposition that tends to disagree with the positivist view that there is an objective reality that exists independent of human persons. Positivism is a foundational perspective which argues that objects in the world have meaning prior to and independent of any consciousness or experience of them; a concept which embraces objectivist epistemology (Crotty 1998: 27).

Conversely, social constructionism is an anti-foundational philosophical perspective which is associated with the post-modern era in qualitative research and views knowledge as constructed, as opposed to created (Andrews 2012: 1). The Social constructionist perspective employs interpretive epistemology where knowledge is constructed by interpreting data obtained from research participants and study settings. This philosophical view takes the position that social and cultural phenomena emerge from the ways in which actors in a setting construct meaning; and where the researcher comes to understand behaviours, language and the meanings attributed to them through immersion in the setting and interaction with the study participants (Schensul 2012: 76). Thus, everything that is real for us comes from communal relationships; which means communities socially construct reality for what it is. I chose this philosophical paradigm because the phenomenon of my investigation (local peacemaking approaches) is socially and culturally constructed and lived by people.

This social constructionist and interpretivist approach enabled me, through my interactions with the research participants, to understand the local peacemaking approaches as practiced by Dinka and Nuer, and to interpret as knowledge the social

constructions involved. That is, the meanings and values that the study participants assigned to these processes (Lapan et al. 2012: 8). I found constructionist and interpretivist methods very helpful for interaction with my participants during interviews as they made sense of their practices and lived experiences. The perspective was also very useful in data analysis where I had to interact with the participants' stories, opinions, attitudes to understand, make sense of, and interpret them as knowledge.

1.6.2 Sampling strategy and rationale

Sampling is the process of selecting individuals or groups from a population of interest, whilst a sampling strategy is the plan set forth to ensure that the sample to be used in a research study represents the population from which the sample is drawn (Kumar 2011: 193). This thesis used purposive and snowball sampling techniques to identify the right research participants for the study. The rationale was that purposive sampling lends more strength in case study research as data sources, participants or cases are selected according to how much can be learned from them (Moore et al. 2012: 253). Patton (1987) cited in (Moore et al. 2012: 253) describes this approach as seeking "information-rich" sources rather than producing representative samples. I designed inclusion and exclusion criteria based on the research questions and the required data; the nature of the research questions and required answers determined who was to be involved in the study. Expert knowledge and peacebuilding roles were the criteria used to include or exclude potential participants.

1.6.3 Selection of participants

I selected the sample based on my judgment that the individuals (key informants) would provide me with the required information. Kumar (2011: 213) observes that the selection of a sample in qualitative research is guided by a researcher's judgment as to who is likely to provide him with the best information. I used gatekeepers, people who helped me connect with my potential participants. Hamersley & Atkinson, (1995) cited in (Creswell 2007: 125), define a gatekeeper as an individual

who is a member of or has insider status within a study population, and who is the initial contact who leads the researcher to participants. After cultivating a rapport with the participants, I employed the snowball technique to recruit other participants. The snowball is a sampling strategy in qualitative inquiry that identifies cases or individuals of interest from people who know those who are information-rich (Miles & Huberman, 1994) in (Creswell 2007: 27). The challenge with the snowball technique however, is that of linking up with key informants and people with expert knowledge; and, also that if the participants chosen at the first stage are biased, the study may also be biased. With this factor in mind, during the fieldwork I tried my best to be careful with the recruitment of the key informants to ensure that the selection of the respondents was based on possession of knowledge, biased or not, which was valuable to the study.

The sample for my study consisted of six categories of participants whom I judged to possess the required information. The first category was composed of traditional leaders. I targeted Dinka and Nuer chiefs and elders, spiritual leaders and traditional healers, both men and women, mainly focusing on those who were involved in culturally-based peacemaking and conflict management activities in their communities, including peace mediators, community and opinion leaders. The second category comprised civil society groups which included faith-based organizations, international and local NGOs, the media, donor agencies and international development corporations. I drew up a list of civil society organizations that were involved in peacebuilding activities and in the peace process that had led to the signing of the 2015 ARCSS.

The third category was the international community which included the United Nations Mission in South Sudan (UNMISS) and other UN agencies, the Troika member countries (US, UK & Norway) as special backers of South Sudan peace processes, and the Intergovernmental Authority on Development (IGAD), a regional body and South Sudan peace mediator. IGAD consists of countries in the East and Horn of Africa, namely: Ethiopia, Eritrea, Djibouti, Somalia, Sudan, South Sudan, Kenya and Uganda. The fourth category was the government and other political

actors. This category included government institutions and officials, other political actors such as the SPLM/A and its factions, and the National Political Parties' Alliance. The fifth category was made up of professionals and experts. This category included academics, lawyers and other key intellectuals. The sixth category included women and youth organizations and individuals.

I planned for a sample of 35-40 participants while considering some related factors. Robson (2011) notes, for instance, that the sample size for a study is determined by such elements as the number of questions asked, the required details of the analysis and the resources such as cost, time and effort. However, I was also aware of another critical deciding factor, namely; the concept of a saturation point, as explained by Kumar (2011: 213), where the quantity of information collected over time becomes of such reduced proportions as to be insignificant or non-existent. This means that though sometimes an estimated number of participants is made prior to the study, actual numbers are determined by the amount of data that are obtained and the point at which the evidence becomes redundant with no new information coming in (Moore et al. 2012: 253).

1.6.4 Research Location: South Sudan

South Sudan is the location of the study. It is a landlocked country in East-Central Africa, the youngest state in the world. It obtained its independence from Sudan through a referendum vote in July 2011 as provided for in 2005 Sudan CPA signed between GOS and SPLM/A. It ended two decades of civil war. South Sudan is bordered by Sudan in the North, Ethiopia in the East, Kenya in the South East, Uganda in the South, the Democratic Republic of the Congo (DRC) in the South West, and the Central African Republic in the West. It has an area of 619,745 square kilometres. It has a population of 11.5 million people.¹ In terms of administrative structures, South Sudan constitutionally consists of ten states, although these were

¹ The 5th Sudan Population and Housing Census was conducted in 2008 as provided for in the 2005 CPA

increased by Presidential decree to twenty-eight in October 2015,² and thirty-two in January 2017.³ The ten states,⁴ were; Central Equatoria, Eastern Equatoria, Western Equatoria, Western Bahr el Ghazal, Northern Bahr el Ghazal, Warrap, Jonglei, Lake, Unity and Upper Nile (see the Map below), administered by elected Governors.⁵ Each state comprises several counties determined by size and administered by appointed Commissioners. Payams also exist at a level below that of county. These are run by administrators. Counties, Payams and Bomas are structures at local government level.

I conducted part of my research in Juba, the capital and the largest city, situated in Central Equatoria state. While it is home to the ethnic Bari, it accommodates residents from almost all the ethnicities of South Sudan, as well as other nationals. I chose Juba because of the presence of key international bodies such as UN agencies, Embassies, the Head offices of international and regional partners, not to mention the staff of national government and academic institutions and local peacebuilding actors.

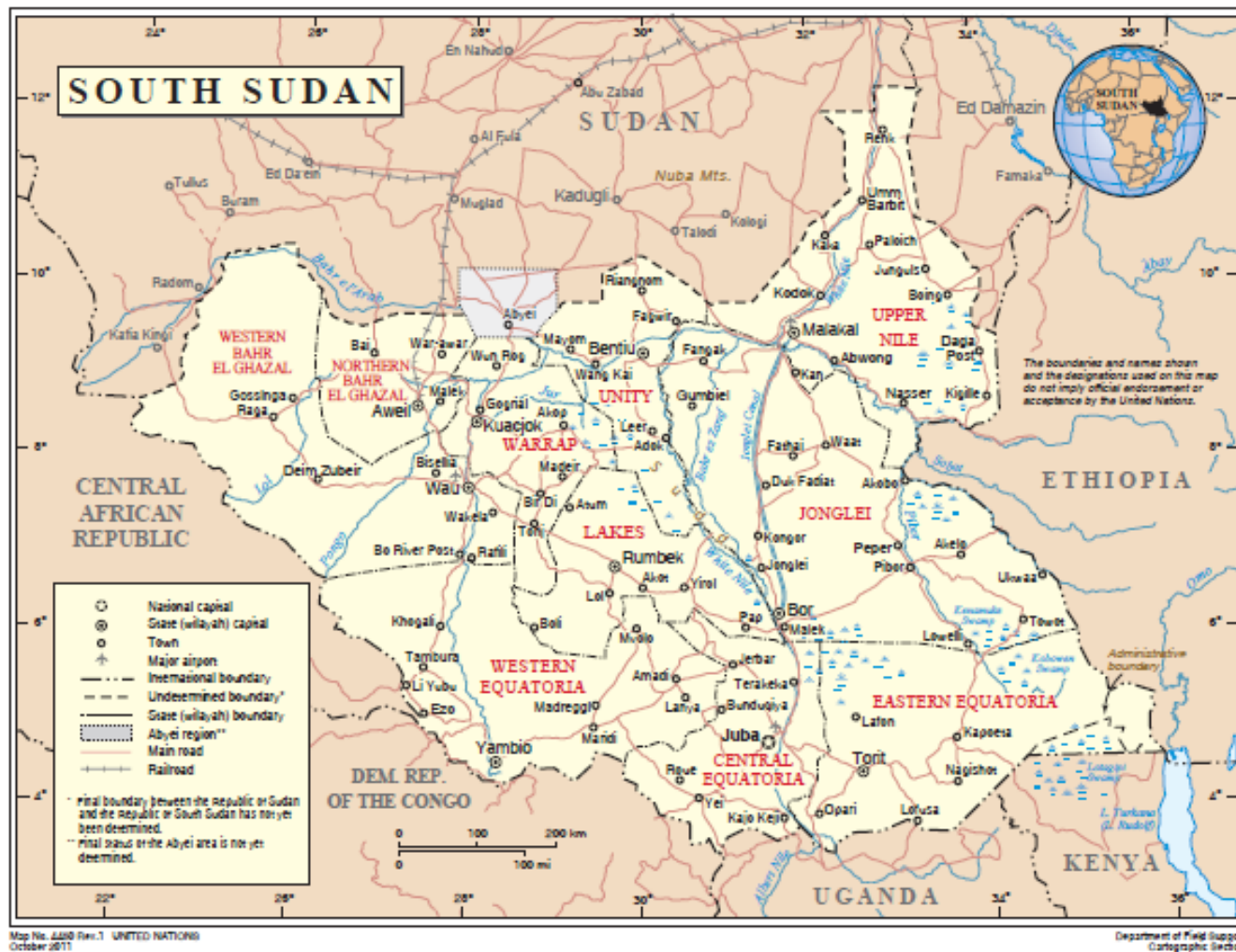
² In 2015 President Salva Kiir increased by a Presidential decree the number of states from 10 to 28. But the boundaries of those states remain contested; <http://www.sudantribune.com/spip.php?article56581>

³ <https://paanluelwel.com/2017/01/22/the-32-federal-states-of-the-republic-of-south-sudan/>

⁴ I have used the former ten states in this study because they are enshrined in the transitional constitution of South Sudan 2011; but also, because the 28 (now 32) states are still contested and have also become one of the reasons some aggrieved communities for example, the Shilluk in Upper Nile are fighting the government and their neighbouring Dinka community since the announcement of the decree.

⁵ The governors were elected during the 2010 elections as provided for in the CPA. Now, almost all the governors have been appointed by the President.

Figure 1: Map of South Sudan



Map No. 4450 Rev.1 UNITED NATIONS - October 2011

Source: <http://www.un.org/Depts/Cartographic/map/profile/southsudan.pdf>

1.6.5 Methods of Data Collection

Based on the research questions, methodology employed and empirical nature of the study, I asked “how and what” questions to generate qualitative data. The questions sought descriptive responses; individual opinions, feelings and experiences which are not easily observed and may only be best revealed through interviewing key informants (Moore et al. 2012: 251). The research generated data from both primary and secondary sources where primary sources of data included

interviews both formal and informal and observation; and methods for collecting secondary data included books, journals, theses and dissertations, internet sources and archival materials.

Interviews

I used semi-structured interviews to collect primary data. Semi-structured interviews resonate with case study strategy to generate descriptive responses obtained in reply to open-ended questions which are useful for seeking the opinions, personal views, feelings and experiences of the participants about the research problem. It is also good to establish rapport with the participants and gain their cooperation. However, the method is time-consuming and expensive. It took me between 45-60 minutes, and sometimes more, to interview one respondent, besides organizing and analysing the rich data.

I carried out a total of 43 formal interviews. I interviewed seven participants from the traditional leaders; I carried out individual interviews with three participants from international civil society organizations and fourteen from local civil society and faith based organizations. I also interviewed five academics and professionals, four participants from government officials and political actors, three participants from the international community, five women and two youths.

Table 1: Formal and Informal Interviews

Interview Segment	Formal interviews	Interview Segment	Informal interviews
Traditional leaders (chiefs & elders)	7	Traditional leaders	2
International civil Society organizations	3	International civil society organizations	1
Local civil society organizations	6	Local civil society organizations	1
Faith based organizations	8	Religious Leaders	2
Academics and professionals	5	Academics	1
Government officials and other political actors	4	Government Officials	1
International community	3	Military Personnel	2
Women	5	Women	1
Youth	2		
Total Number of Interviews	43		11

I also conducted eleven informal interviews with traditional leaders, religious leaders, government officials, military personnel, academics, international and local civil society and women. The informal interviews helped me to clarify some of the issues which emerged from the formal interviews. There were of course challenges, for example, last moment cancellation of interview appointments by potential respondents and finding good interview locations.

In terms of ethnic representation, Dinka and Nuer constituted approximately half of the research participants, but some ethnic groups from the different regions of the country were also represented. I planned to ensure that the six categories of my key informants were balanced in terms of age and gender. But this was not exactly feasible because participants' selection was based on purposive sampling; who could provide the required information as described in the inclusion and exclusion criteria. However, I made deliberate efforts to ensure that women and youth were represented. In some locations such as Agok in Bahr el Ghazal, for example, more women than men were interviewed. Out of the seven participants I interviewed there, five were women. This was very important because it evened up with some locations, for example, the Juba and Wau, where most interviewees were men. The total number of female interviewees came to thirteen out of 43 research participants. The overall participants' age-sets were between 20-80 years.

Observation

Observation is a purposeful, systematic and selective way of watching and listening to an interaction or phenomenon as it takes place (Kumar 2011: 140). I used observation to understand non-verbal information, both during face-to-face interviews and during some functions and gatherings that were related to my research. For example, I attended two court cases in Mayen Abun of Warrab State involving cattle theft that resulted in the death of two people. The court proceedings, which were a mixture of arbitration by chiefs and mediation by traditional village elders, ended with a resolution to return the stolen cattle and compensation for the lost lives. As a non-participant observer, I was interested in the behaviours rather

than the perceptions of the people involved in the court cases and so observation was the best method to collect the required information.

Adding observation as my method of primary data collection made it a mixed qualitative method of data collection and analysis. Kumar (2011: 262) argues that the use of mixed qualitative methods of data collection in social research is very helpful for corroboration and triangulation of data to ensure trustworthiness and validity. Furthermore, he observes that multiple methods of data collection are an important aspect of a case study, namely, in-depth interviewing, obtaining information from secondary records, gathering data through observations, collecting information through focus groups and group interviews and so on. However, the use of observation as a method of data collection may sometimes suffer from a few problems. Kumar (2011: 141) notes that individuals and groups may change their behaviour when they become aware they are under observation; there is the possibility of observer bias; and interpretations drawn from observation may vary from observer to observer. I was conscious of these realities during my fieldwork.

Focus Group Discussions

Focus group interviews refer to group interviews aimed at discussing specific issues (Robson 2011: 285). I did not use focus group interviews for several reasons: first, because of the sensitivity of my research topic. The political atmosphere in South Sudan at the time of my field work was not conducive to focus group discussions on a conflict that had assumed ethnic dimension and which pitted the communities under study (Dinka and Nuer) against each other. Second, gatherings of people in groups required special permission, yet National Security operatives were suspicious. Doing so would endanger the participants and my safety as well, and that would be contrary to ethical research considerations.

Nevertheless, alongside semi-structured interviews and for purposes of triangulation and corroboration of data, I used informal interviews and discussions, observation and secondary analysis. Moore et al (2012: 151) describes triangulation as finding

agreement among evidence collected from multiple sources and using various methods to increase the validity and trustworthiness of findings.

Documentary analysis

I also used information that came from secondary sources that related to my research. According to Kumar (2011: 163), secondary sources include government publications, earlier research, personal records and mass media which cover reports published in newspapers, magazines and on the internet, books and other published information. I used journal articles, dissertations, theses, archival materials, working papers, workshop and conference proceedings, reports, census results and maps of the study sites, to provide supplementary data about the case under scrutiny, the reason being that such data were needed to inform the study as well as to put it in perspective. To evaluate and ascertain the documents' authenticity, I verified the originality and reliability of the source by checking the authors, the providers of funds for the work, and the circulations of the documents.

Other methods of data generation

Ethnographic observation was one of the methods I would have favoured for this study, particularly when approached from the sociological and anthropological perspectives. But this method requires a longer period of fieldwork ranging from 6 to 12 months or more. This did not correspond with my study timeframe and funding. But I still applied direct observation during my data collection, which is central to qualitative research. Lapan et al. (2012) argue that, even if participant observation is not part of the study design, understanding something about the cultural setting is critical in considering appropriate tools of inquiry.

1.7 Reliability and validity

Reliability and validity relate to the appropriateness, quality and accuracy of the procedures that a researcher has adopted for finding answers to his or her research questions.

1.7.1 Reliability

Reliability is the extent to which a research instrument provides similar results and indicates accuracy when used repeatedly under similar conditions (Kumar 2011: 396). I used simple and plain language to formulate interview questions to ensure clarity for my respondents. The flow and logical arrangement of questions in the overall interview guide were tested through pilot interviews with various people who were familiar with the research context. Where necessary, adjustments were made.

The aim was to make it easier for the respondents to understand what was being asked and likewise, through simple open-ended questions, to be able to obtain accurate and more reliable data. I maintained a consistent standard method of asking questions, though with slight variations because of prompts and probes. This was very useful in the context of cross-checking the data. I used the triangulation approach. The aim in this regard was to ensure that there was agreement of evidence from the data which had been collected using the methods that I had applied. It is claimed that when the researcher obtains similar findings from multiple sources using various methods, the information is considered more trustworthy.

1.7.2 Validity

Validity refers to the appropriateness of each step in finding out what you set out to do or the judgment that an instrument is measuring what it is supposed to measure (Kumar 2011: 178). The concept of validity in this regard, is used to ensure that the methods and techniques used to generate data for research are genuine and suitable to achieve their purpose. My quality criteria for judging the goodness or quality of the inquiry is based on the framework suggested by Guba and Lincoln used in the constructivism paradigm, as cited in Denzin and Lincoln (1994) cited in (Kumar 2011: 184-5).which translates into 'trustworthiness and authenticity'; where trustworthiness in qualitative research is determined by four indicators: credibility, transferability, dependability and confirmability, which reflect validity and credibility in quantitative research.

1.8 Field work and its challenges

I spent a fair amount of time planning and preparing my approach to the field work. This included identifying research sites, the number of participants to be interviewed, criteria for selection and their cross-cutting composition in terms of diversity of views, perceptions, opinions and experiences. I developed a fieldwork plan based on my research questions and objectives, to determine the required data I hoped to obtain from the various categories of my key informants (Refer to Appendix 5, page 294). In the planner, I also defined who could and who could not give the required data on specific questions and why. The field work plan proved very helpful as the exercise of anticipating responses familiarized me with the kind of data I gained from the interviews and helped me in seeking clarification using probes and prompts and in the data analysis. However, I had to try to avoid being satisfied with my pre-determined answers, as in some cases the responses did not correspond to those I had anticipated.

Months before I travelled to the field, I initiated contacts with several of my potential participants and some institutions. I sent out emails with participant information sheets attached, to provide background information and explain the purpose of the study. Most of them responded positively, while a few did not. Some of those who initially did not answer my emails were later contacted by my gatekeepers and agreed to be interviewed. Generally, I was very impressed by the willingness of people to participate in the study. This may have been because of the timeliness of the study or perhaps because it provided the motivation to contribute to peace.

In terms of accommodation, I was fortunate. Being a Catholic priest, I could reside with the community of priests. Except for Wau, where I stayed in a local guest house, it was the same in all the field work areas where the Catholic Church enjoys a presence. Being in priests' communities facilitated an easy identification of gatekeepers and a rapid building of trust and confidence. Transport was always made available to me by the priests and that made it easy to visit my participants. Apart from access, it was also easy to identify research assistants and translators when needed, particularly in interviews with village chiefs and elders, but most of the

interviews were conducted in English and the local Arabic dialect, over both of which I have a good command. The fieldwork provided a satisfyingly steep learning curve and arguably proved to be the best study time of my PhD. Being aware from my research training that it entails a lot of challenges, I read and consulted widely and that process by itself was very enriching in terms of scholarly development. It made me handle my respondents professionally, apply research ethics appropriately and ask good questions targeting the goals of my study.

However, I also encountered several difficulties. The first was linked to the socio-political situation of South Sudan, where the study site is still in a state of civil war and many people have been displaced to neighbouring countries as refugees while others are sheltering in the UN Protection of Civilians' sites (POCs) in South Sudan as internally displaced persons (IDPs). This meant that accessibility to some areas and participants was a challenge due to lack of security. As an insider researcher, another challenge was to negotiate access to some research areas due to suspicion and lack of trust created by the ethnic dimension of the conflict. However, being a priest, my entry point was the Church, which because of its moral authority and perceived neutrality commands a lot of respect and trust from a large section of the population. Furthermore, my familiarity with the country's national and ethnic politics also helped me to overcome any tendency to bias that I may have.

There were some deviations from the proposed study locations as outlined in my field work plan. Unity State, mainly home to the Nuer, was inaccessible due to poor security and transport difficulties. Instead I interviewed some displaced Nuer chiefs and elders in Juba. I had also planned to conduct interviews in Bor (Jonglei State), and in Rumbek (Lakes State) both of which are predominantly Dinka areas. At the time, I started my field work, there was active inter-communal fighting going on in Rumbek; and in Bor, where most of the civilian population, displaced during the clashes between the government and opposition forces in 2014, had not yet returned home and the situation was not yet normal. I therefore, decided to choose different sites, namely, Warrap state and Abyei Administrative Area, also the Dinka areas in Bahr el Ghazal which were relatively calm and peaceful. Generally, there was tense

political atmosphere and great concern about security surveillance targeting people who were discussing issues relating to the conflict situation of the country. This affected the participation of some senior government cadres who, although initially expressed willingness to take part in the study, later failed to turn up, which meant some essential information could not be obtained.

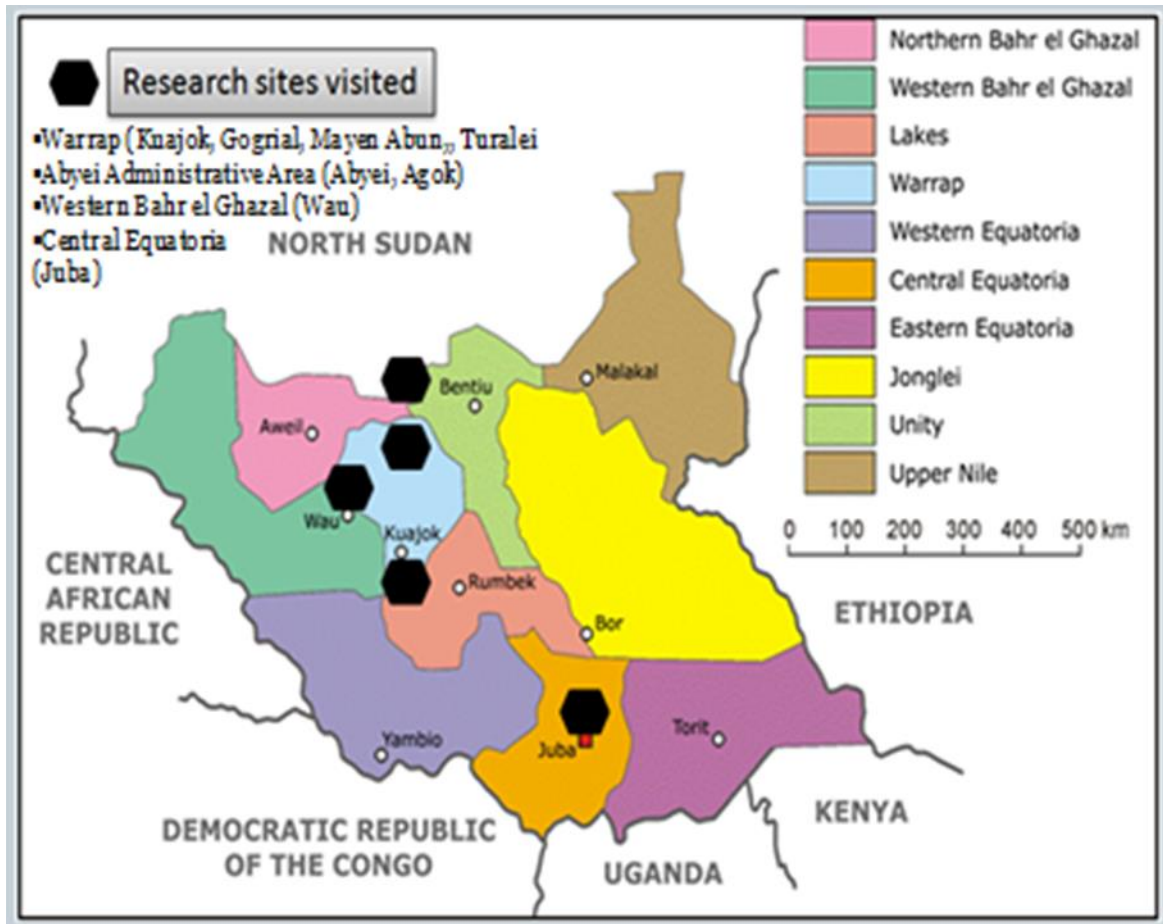
In Warrap state, I conducted interviews in Kuajok, Gogrial, Turalei and Mayen Abun. Gogrial was of special interest because there was a recent inter-clan violent eruption which claimed twenty lives; and local peacemaking mechanisms were used to deal with the altercation. In Abyei Administrative Area, I interviewed participants in Agok and in Abyei town. I questioned more women than men in Agok and Abyei because of their well-organized women's associations and the willingness of their leaders to participate in the study. In Wau, the capital of Western Bahr el Ghazal state and the second largest city in the country, I mainly interviewed academics and the staff of UN agencies involved in peacebuilding. This was because unlike in the other locations where I interviewed chiefs, women and youth, academics and senior NGO officials were based in Wau the seat of Bahr el Ghazal University and UN regional offices.

Another location was Nairobi, the capital of Kenya, which I treated as a special case in terms of the flexibility required by field work and the purposive sampling and snowball techniques employed. I did not initially plan to travel to Kenya as I thought I would meet and interview Lazaro Sumbeiywo,⁶ in South Sudan during the launching of the peace agreement implementation in Juba by the Joint Monitoring and Evaluation Commission (JMEC), a commission charged with the responsibility to oversee the implementation of the ARCSS. It so happened that Lazaro did not attend the event and yet many comments were made about him by the people I

⁶ Lazaro Sumbeiywo was the Kenyan peace Envoy to Sudan between 2003 and 2005 and the IGAD chief mediator for the 2005 Sudan CPA; he also co-mediated the 2015 ARCSS.

talked to and that convinced me that I should consider travelling to Kenya to interview Gen. Sumbeiywo, which I did.

Figure 2: Map of South Sudan showing research sites visited



Source: https://commons.wikimedia.org/wiki/File:South_Sudan-administrative_map.png

1.9 Transcription and Analysis of Data

At the beginning of each interview I asked every participant if I could record the interview. All of them granted permission except one who declined because of her position in the government. I listened to all the recorded interviews and read the field notes I had taken. After familiarizing myself with the recorded interviews, I then started to transcribe the data, an exercise which took me three months to complete. It was a time-consuming task to transcribe 42 individual interviews, each of which was between 45 and 60 minutes long.

I carried out the transcription of my recorded interview data while still in South Sudan. I contracted three persons to help in the transcription but I still had to spend time familiarizing myself with the data transcribed by my assistants. Robson (2011: 478) observes that even if someone else has done the transcription for you, it is still essential for you to spend time familiarizing yourself with the data, and you should also check the transcripts against the original recording for accuracy. I reviewed the transcripts and wrote separate comments related to each interview as a way of organizing the data. The process of transcribing and familiarizing myself with the recorded interviews as part of data analysis greatly increased the clarity of the text. Repeated reading of the data to search for meanings and patterns was a tedious job but helped me handle the data with ease during the writing because I had gained an in-depth understanding of the information.

The process of piecing data together, of making the invisible obvious, of recognizing significance from insignificance, of linking seemingly unrelated facts logically, of fitting categories one with another and attributing consequence to antecedents is known as data analysis (Creswell 2007: 163). So, analysis of data is a 'breaking up' of complex information into smaller parts and explaining the whole in terms of the properties of, and relations between, these parts (Robson 2011: 412). I carried out primary data analysis in four stages, all of which followed thematic coding procedures. I drew upon the guidelines provided by Miles and Humberman (1994)

cited in (Creswell 2007: 148), in analysing qualitative data, which includes data reduction, data display, conclusion drawing and verification. Data reduction in this case is the process of sorting out key words through a coding process, themes, categories or responses whereas further reduction of data is the presentation and visualizing process which is meant to present the in-depth picture of the case using narratives, tables, figures and diagrams, referred to as data display, aimed at making the data more understandable (Creswell 2007: 163). Data display then is its representation through tables, charts and diagrams which make the data more understandable.

The rationale for choosing the thematic approach was its flexibility in terms of the theoretical framework which tended to fit very well with the case study. Other reasons for the choice of the thematic technique include its being user-friendly and good for summarizing key features of a large body of data (Braun and Clarke 2006). The disadvantages of thematic analysis, however, include a lack of clarity about its precise methods of analysis. It has been described in terms such as ‘there is “no best way” for thematic analysis (Braun and Clarke 2006), which means anything goes, and that could be a weakness.

The next stage involved coding and the development of categories. This is a sorting out process which involves comparing, contrasting and combining data (Robson 2011: 468). This was done by describing the cases and their contexts and classifying them to establish themes or patterns. The next step was to devise tables and diagrams to identify some interrelated factors, their relationships and their frequencies, directed by the research questions. My focus at this stage was to identify and select the issues and categories which appeared relevant to each question or group of questions and put them together. After completing the coding and the development of categories, I drafted an initial summary of findings which I shared with my supervisor for comments and guidance.

Once I completed the development of the categories, I identified patterns and trends, to create further categories and, based on the evidence of the data that I collected at an earlier stage, I generated and established meanings and initial conclusions.

Robson (2011: 473-9) states that data display is a tactic for drawing meanings and making verifications by going back to the original sources of data to ensure that the meanings and conclusions drawn do not conflict with the data. I verified the meanings and findings through reference to the recordings and notes I took during the interviews and preceding stages of the analysis. This was then followed by the write-up of the chapters.

This stage was supported by a library research at Durham University, where in September 2016, I was awarded the inaugural Sudan Archive Visiting Library Fellowship,⁷ for Easter, 2017. I engaged with archival resources on traditional and local institutions and mechanisms dating back to pre-colonial and colonial times. The additional research time was very fruitful as it helped in writing and in evidence collection. It provided me with an understanding of how cultural and historical resources can inform contemporary peacemaking and peacebuilding to address the dynamics of locally and culturally embedded sources of conflict.

1.10 Ethical Considerations

Ethics approval was given on December 18, 2015.

Obtaining informed consent

Upon my arrival in the field, and having contacted my gatekeepers I started the process of obtaining informed consent from potential participants to ensure their voluntary involvement. I carried printed copies of the consent forms to offices and individuals I visited and I made sure I had obtained their consent prior to any interviews. The details in the form included; the aims and objectives of the research,

⁷ The Sudan Archive Library Fellowship is a two-month residential programme, meant for Doctoral students studying Sudan and South Sudan or the wider East African region whose research would be supported by the study of materials held in the Archive at Durham University. More information on The Sudan Archive at Durham is found here; <https://www.dur.ac.uk/library/asc/sudan/>

the role of participants, the length of the interview (45-60 minutes), the duration of their participation in the study, the use of the study results and their freedom to withdraw from the study at any time within the process, with or without the information provided (Appendix 2, page 283). I made sure the consent form was well understood before a participant signed it. However, not all participants gave formal informed consent. Some, particularly those from local communities, simply gave verbal consent after they have understood what was required of them.

Confidentiality and Anonymity

To ensure the confidentiality and anonymity of those involved, I informed them about the measures I had put in place which included: no disclosure of names and the avoidance of the use of language and descriptions which might reveal a participant's identity, both in reports and publications. I also notified them that all documents would have names and identifiers securely in my possession and no one would have access to them. I offered and applied complete anonymity to all the participants, as required by the politics and security of the study context. However, none of the participants made such a request. I used coded numbers or letters to identify the person concerned. This meant keeping all information anonymous even during its analysis, reporting and dissemination.

Personal data were saved in a memory stick during the field work and at the University. The folder was securely stored in my laptop and University drive and was kept under lock and key. This information will only be destroyed after the completion of the study, as per the duration provided for in the University of Bradford data storage policy.

Personal and participants' safety

I was aware of the political and security sensitivities of my research and of the potential problems regarding personal safety that it could raise. Upon arrival in Juba, and before embarking on the interviews, I sought an update on the security situation on the ground and learned that circumstances had deteriorated and had gone from bad to worse following the outbreak of the civil war in December 2013. I confined my

movements only to places where safety was assured. Though I was an insider researcher, I decided that putting safety measures in place was vital to avoid any suspicion or unpredictable situations. All interviews were conducted during working hours except for those that had sure security guarantees and were in safe locations. I did not disclose to anyone my personal contacts and residential address. To ensure my participants' safety, I made advanced arrangements for interviews and let them choose their preferred location and time. I avoided public and busy places. The government, international and NGOs, official interviews were conducted in offices and, in a few cases, in hotels and restaurants. For local communities, most interviews were carried out in a Church compound or under a tree.

The anticipated potential psychological risks and harm to participants included anxiety and the reawakening of traumatic experiences because of participating in the study, which involved talking about issues of human rights abuses and atrocities suffered. Though none of such incidence happened, I had planned to minimize them by organizing some counselling support. All this was done to ensure that a "no harm principle" was adhered to protect the participants from any hurt that might result or spring from the study, and that if any did occur, the risk would be minimal.

1.11 Reflexivity

The researcher's self-awareness about how his/her social identity and background influences the research process is referred to as reflexivity (Robson 2011: 22). Moss (1995) cited in (Rose 1997: 309), refers to reflexivity as those introspective aspects of thought that are self-critical and self-consciously analytical and these include the researcher's reflection as to how his/her research will be reasonably objective and accepted by the scientific community. Reflexivity is critical to the conduct of field work because a more reflexive and flexible approach allows the researcher to be more open to any challenges to the theoretical positions and assumptions that fieldwork gives rise to.

While familiarity with the context of my research was an advantage in terms of making initial contacts, and planning my approach to the field, I had to know that

conducting research in a familiar environment required a prominent level of consciousness, humility, flexibility and openness. It is obvious that my motivation in this research as described above relates to certain facets of my identity such as being a South Sudanese, a Catholic priest, a peacebuilding practitioner, and a member of a minority ethnic group in the country. I was aware that these dimensions of my identity as a researcher could bring into play during fieldwork, not only inside and outside factors but also some of my values, assumptions and biases.

My identity characteristics and positionality could have reflected some power relations during interviews. Madge (1993) cited in (Rose 1997: 308) argues that when situating knowledge, it is crucial to consider ‘the role of the multiple “self”, how a researcher’s positionality (in terms of race, nationality, age, gender, social status, sexuality) may influence the “data” collected and thus the information that becomes coded as “knowledge”. The challenge was real in my case as some participants tended to see me more as a priest and not a researcher, particularly in those research locations where I was asked out of necessity by some priests to preside over or to concelebrate during Sunday masses. I appreciated the challenge but made sure it did not influence my conduct when interacting with research participants. I always tried to present myself to my participants as a PhD research student and not a minister of the church at that point. It was of course difficult for some of them to see the difference; and that resonates with the view of Fraser et al. (1992) cited in (Giampapa 2011: 133) who argue that researchers bring their biographies and subjectivities to every stage of the research process and these influence the questions they ask and the ways in which they try to find answers. However, they further stressed that as researchers cannot help being socially located persons, their subjectivities should not be regrettable, but as one element in the human interactions that comprise our object of study.

I entered the field well equipped with research skills gained from Graduate School training and discussions with my supervisors, and from my engagement with appropriate theoretical and methodological literature and knowledge to conceptualize what being in the field means about ensuring ethical and rigorous

research. Besides, I also engaged with different bodies of literature on South Sudan conflicts and politics, peacebuilding approaches and Dinka and Nuer justice and reconciliation mechanisms. However, I was conscious that interviewing is an interactive process and so tried to avoid pre-empting answers and giving the impression that I already knew some of the things they were telling me. I always tried to portray myself as an interested learner.

Despite my preparation for field work and continuous personal reflection however, there were still challenges due to unexpected circumstances, which I had to negotiate and deal with. For example, some participants invariably saw me as a South Sudanese and not as a researcher during interviews and they sometimes side-tracked and wanted to talk local politics with me and some kept saying, as they provided answers to my questions: “Of course, you know this as a South Sudanese”. The problems which confronted me during my fieldwork were not only about appreciating the participants’ behaviours, language and their perception of me, but also about understanding my own identities and background and their influence on interpreting the meaning my participants assigned to the interview data. Giampapa (2011: 132) for example, notes that being in the field entails a great many complex issues in terms of the researcher-participant relationship across space and time.

1.12 Structure of the thesis

This thesis is divided into seven chapters;

Chapter one; is the introduction to the thesis as presented and discussed above.

In Chapter Two, I discuss both the theoretical and conceptual framework for analysis. I critique the liberal peace theory and the extent of its influence on international peacebuilding approaches and debates. The analysis of the theory sheds additional light on the reason that alternative or complementary methods such as indigenous mechanisms are continuously relegated in favour of the Western liberal peace approach. I also discuss the concept of *Ubuntu* (the African philosophy of peace); and indigenous approaches to post-conflict peacebuilding and reconstruction. I then conceptualize peacebuilding as a method of conflict resolution,

tracing the origin of the concept to the end of the Cold War and the emergence of contemporary armed conflicts in the 1990s; and transitional (post-conflict) justice and reconciliation.

Chapter Three; sets out the historical perspective and political context of the South Sudan conflict; tracing it to the different colonial periods and policies up to the independence of Sudan in 1956; and the policies and ideology that characterized the post-colonial and post-independence governance in Sudan. I explain how the Sudan administration, which aimed to build the nation based on Arab culture and Islamic ideology, led to two North-South civil wars which raged for about five decades with the brief interlude of the Addis Ababa peace agreement in 1972, and subsequently the CPA signed in 2005 which ushered in the independent state of South Sudan in 2011 through a referendum vote; followed by a quick relapse in 2013 to another civil war.

The Chapter then analyses the peace agreements that attempted to settle the persistent violent conflict in Southern Sudan as the territory of Sudan, with South Sudan as an independent state. I discuss the strategies employed during the CPA, which not only marginalized indigenous and traditional mechanisms in the process, but also failed to include any transitional justice component in the agreement. I examine the role of the international community including the UN, the international agencies and NGOs; regional bodies such as the African Union (AU) and IGAD and the role of state and non-state actors. I also discuss the causes of the conflict, which continues to rage despite signing of the ARCSS in August 2015, to decipher the role of indigenous schemes in the agreement. The conflict analysis shows that the current South Sudan struggle is intricately linked to the colonial and post-colonial history of Sudan and the failures of the CPA to address the underlying root causes of the dispute and to deal with the legacy of the war.

Chapter Four; is an empirical (case study) chapter. In this chapter I try to explore and understand local institutions, actors and methods of peacemaking across South Sudan in a comparative perspective to other African countries. To appreciate the changes which may have taken place and figure out their potential role in modern

conflict, I sift through the literature and responses from key informants, the practices from pre-colonial, colonial and post-colonial periods to the present.

Chapter Five is a further empirical (case study) chapter. Here, I explore the concept of justice and reconciliation and the meaning they carry among the Dinka and the Nuer. I examine justice and reconciliation practices and local restitution to ensure accountability, reintegration and reconciliation between and amongst communities after violent conflict. I discuss the role of traditional leadership (chiefs and councils of elders) in mediation, adjudication, restitution and restoration. I also look at examples of justice and reconciliation that have been implemented at different points in the past (the colonial period, 1930s, Sudan's post-independence period (1956-1982) and during the SPLM/A war (1983-2005) by Dinka and Nuer communities to find out the outcomes of the implemented programmes. I investigate what has been happening lately in terms of justice and reconciliation from 2005-2015 after the signing of the CPA and ARCSS. I also critique local initiatives while outlining areas that could inform and benefit contemporary peace processes.

Chapter Six; is an analysis chapter where I discuss and assess the potential roles and limits of indigenous institutions and approaches with a view to establishing a common ground by blending the indigenous and international justice strategies for possible application in the resolution of contemporary armed engagements. I examine the extent to which Dinka and Nuer justice and reconciliation mechanisms can be applied to transitional justice. It is a synthesis of topics discussed in this study, ranging from theories and the historical context, to the case study and empirical evidence.

Chapter seven; concludes the thesis. I provide a thesis summary, core arguments and synthesis, drawing together the general findings, practical and wider implications and referring to the main research question to see the extent to which it has been answered.

Chapter Two

Conceptual Framework and Literature Review

2.0 Introduction

This chapter analyses key concepts that constitute a framework for the study which explores the potential of local approaches to the resolution of contemporary armed conflicts; their relevance and application to transitional justice and reconciliation in the aftermath of violent conflicts and attempts to situate local initiatives in the broader issue of peacebuilding discourse and debates. The chapter critiques the liberal peace theory upon which the international peacebuilding model is grounded; it sets out and analyses the African philosophy of peace-*Ubuntu*, and conceptualizes peacebuilding, justice and reconciliation as methods of conflict resolution. It argues that understanding the different conceptual perspectives sheds light on the extent to which the potential and limitations of local peacemaking strategies can be ascertained and whether they can be applied to modern disputes to build sustainable peace.

The chapter comprises four sections: firstly, a critique of liberal peace theory and an exploration of African philosophy of peace; secondly, the concept of conflict and the emergence of the contemporary armed conflicts at the end of the Cold War; and the concept of peacebuilding. In engaging with the concept of post-conflict peacebuilding, this section will discuss the notion of local strategies, together with their potential and limits; and the concept of hybridity, which provides an interface and relationships between liberal and local approaches; third, the chapter will conceptualize human rights from universalist and cultural relativist perspectives in relation to international treaties, conventions and laws; and fourthly and finally, the chapter will turn to conceptualize justice and reconciliation, as components of post-conflict peacebuilding, under different transitional justice mechanisms: prosecutions (retributive justice), truth commissions (non-judicial bodies), local mechanisms (restorative justice), and the concept of reconciliation.

2.1 Theorizing a Liberal and an African Philosophy of Peace

A critique of liberal peace as the dominant peacebuilding approach and of African philosophy of peace forms the theoretical foundation of this chapter and the entire thesis.

The Western liberal peace approach

The international (Western) approach to peacebuilding is grounded on the liberal peace thesis, which views a liberal democratic polity and a market-oriented economy as the most effective and lasting antidote to violent political conflict (Boutros-Ghali 1992; Bercovitch and Jackson 2009: 172). The rationale for the assumption of this model is that violent conflict has multiple causes that are rooted in the political, economic and social structures of society and any attempts to resolve such disagreement must deal with these structural problems. Since these kinds of conflict are somewhat generic, a universal peacebuilding approach or template can be applied across all cases (Bercovitch and Jackson 2009: 172). The model focuses on building state and state institutions to build peace. As such, emphasis is put on building a liberal state in war-torn societies that would promote liberal values such as, the protection of individual rights, the rule of law, a free market economy, and democracy (Tom 2011: 94). This approach manifests itself through political and economic liberalization.

Paris (2004) observes that since the end of the Cold War, international peacebuilding interventions, which are based on the liberal peace agenda, have been the main strategy of the international community, and promoted by the UN and donor agencies, to resolve armed conflicts, prevent relapse into further war and violence, build state institutions and create sustainable peace and development in conflict-prone and post-war societies across the world. But he maintains that the application of a universal peacebuilding template across all cases is problematic since the current international approach is grounded on the Western liberal theory, a technique which at times may not be applicable or suitable to certain non-western scenarios

(Paris 2004: 42). The biggest weakness is its failure to recognize the existence of other approaches and local agency in the war-affected environments.

Liberal peacebuilding and peacebuilding are therefore, not the same though sometimes the two concepts have been used interchangeably. Whereas the dominant liberal peacebuilding places emphasis on creating a liberal state, democratization, a free market economy, individual rights and the rule of law, peacebuilding emphasizes issues such as social justice, welfare provision, tradition, custom, culture, the grassroots, reconciliation, equity, humanistic agendas for peace rather than technocratic institutional state-centric agendas for peace (Tom 2011: 94). This means that proponents of liberal peace including leading states, such as the US and UK, promote not only a peacebuilding practice across the world but also an ideology; and as will be discussed under the critique of the approach, this apparently explains their consistent reluctance to recognize other societal institutions, resources and practices that, in their view, do not reflect the liberal systems, arrangements and values they promote.

As such, liberal peacebuilding in this case, represents minimalist approaches that put emphasis on ending overt violence, and peacebuilding represents the maximalist approaches that aim at addressing root causes of conflict and structural violence such as social injustice and poverty (Newman 2009). The standard success, according to Call (2008: 6-7), is to strike a middle ground that includes ending overt violence and ensuring no recurrence of warfare as well as using sustained national mechanisms for the resolution of conflict, signified by participatory politics; where participatory politics does not equate to liberal democracy, but refers to mechanisms used by aggrieved social groups to feel that they have a voice and stake in the national political system. Bringing about an understanding of this is kind is the goal of this study.

2.1.1 Critique of Liberal Peace Theory

As a conceptual framework for peacebuilding and maintenance of global order, liberal peace programmes have been criticized by many scholars, researchers and

practitioners. Critiques have focused on a wide range of controversies, such as the impact and legitimacy of promoting liberal democracy and market economics in conflict prone-societies, the nature of the state and state-building in many regions of the developing world, and the broader question about power, the threat to peace and security, and intervention in international politics (Newman 2009: 26). I will mainly focus on the contentious points that are closely related to my research topic: transitional justice and reconciliation.

Liberal peacebuilding focuses on state-building to build peace. But it also has non-state elements, usually the promotion of civil society, yet a Western understanding of civil society (Orvis 2001). Critics view the state-building aspect of peacebuilding as a “thinly disguised attempt to modernize and thus, civilize dysfunctional third world countries that are incapable of developing viable indigenous forms of cohesion” (Newman 2009: 30). Moreover, peacebuilding is more focused on what peace means qualitatively, and it does not have to be necessarily connected to the state. It is through liberal peacebuilding which has emphasized building liberal states that peacebuilding has been connected to the state. In this sense, contemporary state-building in post-conflict societies is a positivist instrumentalist Western Westphalian project which argues for the need to build a state to build peace. It is not, therefore, surprising that state-building is fraught with tensions and contradictions (Paris and Sisk, 2009).

Referring to democratic peace, proponents argue that certain kinds of liberally constituted societies will tend to be more peaceful, both in their domestic affairs and in their international relations, than illiberal states. This argument is premised upon the idea that democracy and a free market economy encourage people to resolve and express their differences peacefully and that this is the best foundation for development and accountable governance (Newman 2009: 39). This argument asserts that consolidated democracies do not go to war with each other because democracies have institutional constraints upon leaders that make initiating conflict with other countries more difficult; and that, because such countries are interdependent economically, going to war may disrupt economic and trade relations

(Newman et al. 2009: 11). This view however, ignores the fact that though democracies do not go to war with each other, they go to war with 'non-democratic' countries. In their efforts to 'democratize' those societies they have often been violent themselves (Newman et al. 2009: 11). Such has been the case, for example, in military interventions in Iraq, Afghanistan and Libya (Mac Ginty 2008b).

Furthermore, state building to build peace has been challenged by some critics, as early demands for democratic elections can exacerbate conflict in divided societies; economic liberalization and capitalism could marginalize the poor and create new grievances; opening up to the influence of globalization could also make states more fragile (Paris 2004); and in this way liberal economics and democracy can contribute to instability and exacerbate conflict (Newman 2009: 39). In South Sudan for example, the 2010 general elections earlier noted, intended to provide political legitimacy for the two parties to the 2005 Sudan CPA; the NCP and SPLM, resulted in several rebellions. Other war-shattered countries have had similar experiences where elections and structural adjustment programmes (SAP), designed for democratic and economic development and stability, have apparently hindered the consolidation of peace, and in some cases even sparked renewed violent conflicts. Political liberalization in Angola, through hurried elections in 1992 after several years of political turmoil, contributed to the resurgence of violence; and in Mozambique the effects of economic liberalization through SAP conditions imposed by international financial institutions (IFIs) after the 1992 peace agreement, have threatened to reignite the conflict (Paris 2004). This means that the very process of political and economic liberalization of the liberal peace agenda has generated destabilizing side effects. A significant amount of research suggests that transitional societies moving towards democracy may be more likely to experience civil conflict, especially in poor and divided societies (Newman 2009: 39). Subjecting such societies to political and electoral competitions at an early transitional stage provides recipes for war.

The assumption that informs liberal peacebuilding in post-conflict contexts has ostensibly led to the viewing of peacebuilding as state building. The question, however, is whose vision of the state is being used by those engaged in international

peacebuilding? According to Newman (2009: 30), such institutions always resemble the Western secular notion of the state, based upon liberal values not something that is unquestionably accepted in all contexts as legitimate or appropriate. Critics argue that the liberal peace formula for peacebuilding reflects an extension of the Western hegemonic powers over developing nations. The ICC, for example, is seen as one of the hegemonic agendas to 'civilize' conflict societies within the transitional justice framework that puts emphasis on the rule of law (Sriram 2009). Similarly, Jackson (2009: 320) holds the view that the ICC is an expression of liberal views of universal human rights that seek to protect the individual from justice that is the preserve of the state.

This expression of human rights is at the very core of liberal peace theories of post-conflict reconstruction. Such externalized endeavours could signal the importation of governance values that may not be compatible with the local context. Post-conflict peacebuilding within the framework of liberal peace is therefore, not neutral; it reflects ideological values and serves the interests, values and priorities usually of the interveners and not those of the victims (Newman 2009: 38). Perhaps this explains the reasons why liberal peacebuilding interventions have generally encountered disappointing results despite the huge resources invested in the efforts.

Specifically, the international instruments of justice, such as the ICC and ad hoc tribunals modelled on liberal peace practices, do not take into consideration local attitudes to peace, making the affected communities passive recipients. Moreover, apart from its exorbitant costs in terms of resources, and time, these interventions are often short-term solutions to more complex problems. To address the root causes of disagreement and develop mechanisms of conflict management and accountability in governance, one would have to make long-term commitments.

If these are the key weaknesses of liberal peace proposals for post-conflict peacebuilding, what are the alternatives? Despite Paris' critical stance regarding democratization and marketization as the panacea for long-term peace, security and development in war-torn and post-conflict societies, he controversially maintains that he does not see any viable alternative to liberal peacebuilding; and insists that

despite their many flaws liberal peacebuilding interventions have done more good than harm (Paris, 2010). The claim that there is no alternative to liberal peacebuilding is (misleadingly) one reason it is being promoted by the international community as a universal paradigm or blueprint to put back together collapsed states and rebuild war-ravaged societies. It appears that this is the most problematic assumption of the liberal peace model which often neglects the role of the conflict affected societies, their programmes, cultures, values, experiences and political contexts which are required for local participation, ownership and sustainability. For example, transitional justice mechanisms applied in Africa are often international justice instruments such as the ICC or Ad hoc tribunals that mainly focus on the retributive justice dimension to address the issue of impunity instead of restorative justice mechanisms that are relevant to reconcile bitterly divided communities. According to Boege (2011: 433), local approaches have been in use and relied upon in many countries in the global South and particularly in Africa since pre-colonial times. That they have been in use for so long, though constantly changing, may be their strength.

Murithi (2008: 16) notes that what can be learned from local approaches is the emphasis and value they place on achieving peace through forgiveness, healing, reconciliation and restorative justice. This has been the missing element in most internationally brokered peace agreements; South Sudan is a case in point, where issues of justice, accountability, redress of past grievances and reconciliation were marginally dealt with in the CPA (Waihenya 2006: 158). Similarly, Gawerc (2006: 437) argues that one of the greatest shortcomings of contemporary peace processes is that they often fail to address the bitterness among war-affected communities and the sources that generate it. Consistent with this position, Mac Ginty (2008a: 141) proposes that the recurrent criticism of liberal peacebuilding has been its over-emphasis on state and institutions building to the neglect of the emotional or people-focused dimension to conflict, such as inter-group perception, trust-building and reconciliation. Moreover, the main issue with international mechanisms such as the ICC, is the overemphasis on the retributive aspect of justice as opposed to other non-judicial mechanisms.

Boege (2011: 433) emphasizes that traditional and local approaches, have relevance and potential within the hybridity of large-scale violent conflicts and hybrid political orders in many fragile states and environments in the global South, where many of the contemporary conflicts can no longer simply be perceived as conventional wars, inter-state or civil wars to overthrow the state government, but are characterized by an entanglement of a host of actors, issues and motives. He stresses that a new dimension is added to the 'new war' thesis by the involvement of non-state actors and institutions, where traditional social entities such as extended families, lineages, clans, ethnicities, religious and ethno-linguistic groups become parties to the violent clashes, introducing their own agendas into the overall conflict setting; these provide the space for traditional attempts at conflict transformation, while making it possible and necessary to utilize them. It can then be argued that by claiming that there is no alternative to the liberal peace procedure while relegating local approaches to peacebuilding in the aftermath of violent conflict, the liberal peace and liberal peacebuilding strategies ignore vital local resources, institutions and roles that could subsequently undermine the entire effort. Some examples of ICC, ad hoc tribunals and TRC in Africa speak to this point.

Evidence indicates that the ICC's intervention in Northern Uganda and the indictment of five LRA Principals including their leader Joseph Kony despite the passing of Amnesty Act in 2000, precluded the possibility of success at the Juba peace talks, and assured that agreement between the Government of Uganda and the LRA could not be reached (Higgs, 2016). In Rwanda where there was a mix of justice systems; international, national and local to address the post-genocide situation, the relationship was characterized by suspicion and friction rather than by productive cooperation. In Sierra Leone, tensions between the Special Court and TRC branded their work, as the TRC's restorative approach is at odds with Western preferences for justice through prosecutions favoured by international community (Graybill 2017: 45), though the TRC itself was seen by the rural Sierra Leoneans as a foreign institution. Despite this tension however, the two transitional justice bodies have complemented each other. Having spent only a week in each of the country's 12 provincial headquarters, mainly due to financial constraints, the Sierra Leone's TRC

left large areas of the country uncovered (Alie 2008: 130). This gap would be filled by *Fambul Tok*, a traditional reconciliation process that continued operating beyond the TRC's life. This is where the recognition and incorporation of local approaches in intervention policies is significant for ensuring ownership and sustainability.

2.2 African Philosophy of Peace: The *Ubuntu* Principle

Whereas liberalism is the Western philosophy of peace, its African counterpart is centred on common humanity which views life and the world in terms of community, as opposed to individualism. Despite the diversity in Africa in terms of socio-cultural, economic and political organizations, one common worldview underpins African societies, the concept of shared humanity. This concept is referred to as '*Ubuntu*' in the Bantu root (Zulu) language of Southern Africa (Nabudere 2004: 10). The concept of *Ubuntu* has been part of the African cultural worldview for a substantial period. One respondent stated, "it is very difficult to trace the exact beginning of the concept. However, through quite many historical and cultural studies, it is traced way back to the time of Bantu civilizations: those that used to live in central, east and Southern Africa" (KI 42: 2/12/16).⁸

As an African notion, *Ubuntu* is about the essence of being human; expressed in the Zulu maxim: "*Umuntu ngumuntu ngabantu*", which literally means "a person is a person through other persons" (Nabudere 2004: 10). Tutu (1999: 34) speaks of *Ubuntu* as "humanness" and as the philosophy of a shared humanity in which we define ourselves through our relations with other people: "my humanity is caught up, is inextricably bound up in yours; I am human because I belong, I participate, I share; what dehumanizes you inexorably dehumanizes me". The key concept describes how people and individuals belonging to the Nguni ethnic groups in the largely Bantu Southern African region, view each other or share their perspective of the world, which is, that "human beings are human beings through other human beings and

⁸ Interview 42, with Tim Murithi: (2/12/2016)

people are people through other people” (KI 42: 2/12/16),⁹ ; this creates a sense of interconnectedness from which one derives certain practices of humane engagement, not only at a social level but also in terms of how goods are distributed within society, and at the political level, how problems are solved and decisions are made.

This concept has been defined by several scholars: According to Murithi (2006), *Ubuntu* is an African cultural world view; Archbishop Tutu in his book *No Future Without Forgiveness* (1999: 34) summarizes the characterization of *Ubuntu* by saying that;

“A person who possesses the *Ubuntu* attitude is the one who is noted as being hospitable, generous, friendly, compassionate and caring towards his fellow human beings. *Ubuntu* not only embraces hospitality and caring about others but also a willingness to go that extra mile for the sake of others. It involves an individual being individual in community and belonging within that social, moral and political framework; and since the focus is on community and common humanity, the solitary individual is a contradiction of this concept”.

Based on this emphasis on community and peaceful coexistence, *Ubuntu* does provide a framework and philosophical basis for reconciliation in the aftermath of violent conflict (Nabudere 2004: 10). As one informant explained, “I believe *Ubuntu* has a lot of resources that it can provide for our efforts to promote peacebuilding and reconciliation in Africa” (KI 42: 2/12/16).¹⁰ For example, through an inclusive community-wide conflict resolution and reconciliation forum, a council of elders or the king himself mediates using this notion of *Ubuntu* to highlight the importance of peacemaking through the principles of reciprocity, inclusivity and a sense of shared humanity between peoples (Arthur et al. 2015: 71). In *Ubuntu* societies, the entire

⁹ Interview 42, with Tim Murithi: (2/12/2016)

¹⁰ Interview 42, with Tim Murithi: (2/12/2016)

society is typically involved at various levels at trying to reach a solution to a problem which is viewed as threatening the social cohesion of the community. This means *Ubuntu* approaches emphasize a link between conflict resolution and reconciliation, rather than viewing them as separate phases (Murithi 2008: 27). The act of reconciliation symbolizes the willingness of the parties to move beyond the psychological bitterness that had prevailed during the conflict situation. The principle of *Ubuntu* implies that we create a healthy relationship based on the recognition of human interconnectedness where everyone is linked to everyone else.

The *Ubuntu* world view, promotes an element of restorative justice, as opposed to prosecution or punishment as a form of retributive justice (Villa-Vicencio 2009: 124). Restorative justice is at the centre of the *Ubuntu* principle. It is more concerned about the restoration of the victim and the victimized community than about the increasing costly punishment of the offender. It directly holds offenders accountable to the person or community they have victimized. It encourages the entire community to be involved in holding the offender accountable and promoting a healing response to the needs of victims and offenders. It places emphasis on getting offenders to accept responsibility for their behaviour and make amendments, whenever possible, rather than on the severity of punishment (Freeman and Hayner 2003: 111). This means it recognizes a community's responsibility for the social conditions that contribute to the offender's behaviour. Villa-Vicencio (2004: 36) observes that the aim of restorative justice is to contribute to the rebuilding of society by seeking to address the personal and communal dimensions that create the possibility of rebuilding life in the wake of tragedy and destruction. These include the re-empowerment and restoration of the dignity of victims and survivors, the restoration of civil trust and the affirmation of the right to such basics as food, housing, health-care and education.

2.2.1 A critique of *Ubuntu*

The concept of *Ubuntu* is critiqued from political and historical perspectives. After recognizing that the *Ubuntu* concept has deep roots in African culture, one can raise certain doubts. If that is so, why does a nation like Rwanda, knowing what *Ubuntu* means, allow genocide to occur? Why are there numerous clashes and civil wars

happening in Africa where a supposedly *Ubuntu* understanding is rooted? Why is there rampant corruption leading to under-development and lack of services, and why do Africans seem to be failing to peacefully resolve their problems based on the *Ubuntu* principle? Are common humanity and interconnectedness the preserves of Africa? Unless these questions, among others, find convincing answers, there is a danger in trying to romanticize *Ubuntu* as a concept. I now turn to engage with these questions and debate them by examining the weaknesses and strengths of the *Ubuntu* concept and practices.

Some critics question the continental character of *Ubuntu* philosophy because at best, it is a Bantu philosophy not related to the way of life of and outlook of other ethnic groupings of Africa. The question is, to what extent is *Ubuntu* a cross-cutting philosophy in the African continent? Based on my encounters and conversations with people from various parts of the continent, and having engaged with the relevant literature on the *Ubuntu* concept and practice, I would contend that it is, indeed, a cross-cutting philosophy in Africa. One can find variations of it in central Africa, west Africa and eastern Africa. For example, Murithi (2008) maintains that among some ethnic groups in Kenya, there is the notion of *Utu* which speaks to this notion of *Ubuntu*, of collective coexistence and the need for Africans to recognize their interconnectedness and what binds them.

Ubuntu is therefore, not unique to the Bantu in Southern Africa, and not exclusively a Bantu philosophy. Though more developed in South Africa, there is synergy between the *Ubuntu* concept and traditional values in other African countries. It is about the importance of human social cohesion and mutual fulfilment (Villa-Vicencio 2009: 14). According to Nabudere (2004: 11), many scholars confirmed that *Ubuntu* is part of the world view of Africans in most parts of the continent, stretching from the Nubian Desert in the Sudan to the Cape of Good Hope and from Senegal to Zanzibar. Murith (2008: 26) also states that *Ubuntu* is a cross-cutting philosophy of peace in Africa as the approach is utilized in many societies and communities that are spread out across Southern, Central and East Africa. However, while the

essence of this philosophy is the same across the continent, every African society has its descriptive term and ways to practice this philosophy.

But *Ubuntu* is not unique to Africa either; Murithi (2008) argues that it is found in some religious texts such as Abrahamic heritage and other global philosophical works. This is especially legitimate if the concept is to be understood in its definition as the essence of being human: Because *Ubuntu* forms the basis of the African philosophy of being in which; *ubu* evokes the idea of “being in general”, and *ntu* denotes “being human”; the words suggests the wholeness and oneness of all life, the location and individual humanness within the larger whole (Nabudere 2004: 11). What is unique however, is that it is an African conceptualization which enables Africans to ground a certain way of seeing the world and of being in the world from an African indigenous perspective.

Ubuntu is not obviously the absolute answer to understanding the life of a human being, but it has the potential to make a significant contribution to building and promoting the culture of peace. There is significant potential in terms of application and for utilization to promote peace in the continent. It has underpinned attempts to settle disputes and conflicts at different levels on the continent, and is central to the idea of community and political reconciliation (Villa-Vicencio 2009). The African Union for example, as a continental organization has occasionally made references to *Ubuntu* principles and approaches to dealing with some of the urgent challenges that Africa faces as a continental society. One respondent asserted;

“if you draw from the principles and practices of *Ubuntu* you can delineate some specific practical dimensions that could be utilized in dealing with contemporary African conflicts and indeed make a possible contribution to global peace efforts; for example, from *Ubuntu*, you can derive certain principles of how political dialogue can be run in an inclusive manner based on that notion of interconnectedness; from *Ubuntu*, you can get a sense of what an *Ubuntu* economy might look like, in terms of a much more distributive agenda of state resources or resources of the community to ensure that all members of any political and social community receive what

is necessary to sustain themselves and their families” (KI: 42:2/12/16).¹¹

This as well resonates with the position of Kelshell (2008).

In this context, Nabudere (2004: 10) suggests that the rejuvenation of the philosophy of *Ubuntu* is important, both for its contribution to political reconciliation and for the ways in which it provides Africans with a sense of self-identity, self-respect and a basis for social reconstruction. It enables Africans to deal with conflict in a positive manner by drawing on the humanistic value handed down to them through their history. Politically and philosophically, Africans can make a unique contribution of these values to the quest for peaceful coexistence in the world.

It does not, of course, follow that all Africans propagate, practice or are consciously aware of the philosophy any more than any other influential and dominant philosophy of life, such as liberalism, practised and propagated globally. Nabudere (2004: 11) argues that some who are aware of it dismiss it as a post-colonial utopian invention of African political elites in the age of globalization. While such a critique may raise some doubts regarding the concept and principles of *Ubuntu*, it is important to remember that the main liberal peacebuilding school of thought, has been quite dominant to the extent that even though it has a European and north American origin, many Africans have internalized it as their way of perceiving their strategy of dealing with peacebuilding which ultimately undermines African efforts to sustain, entrench and plant the roots of peace deep in their continent. Furthermore, Boege (2011: 434) argues that, while Western thinking about politics in general and conflict transformation in particular presents a very specific and narrow perspective, yet it is conventionally taken for granted and has become so overwhelmingly predominant in today’s world that it appears as the universal model, where other thinking perceived as “the other” of, or different from the Western approach.

Although it might be true that *Ubuntu* is a post-colonial construction, so is the dominant liberal framework of peacebuilding. I would therefore, argue that the

¹¹ Interview 42, with Tim Murithi: (2/12/16)

concepts must stand in parallel and operate in complementarity. This means it is important to analyse at a theoretical level this notion of *Ubuntu*, examine its essence and then promote it to frame processes of peacebuilding. Such a move can also provide some indications of the types of mechanisms and institutions needed to advance peacebuilding in Africa. One of the recurring critiques of indigenous approaches to peacemaking based on the *Ubuntu* principles is gender bias, such as the missing voice of women in peace discourse and the relegation of their role and agency to the background in peace efforts. This will be discussed in Chapter Four.

Given the radical nature of Western cultural influence on African states and societies, many contemporary critics contest the relevance and place of traditional African initiatives such as the *Ubuntu* approach in the face of the complexity of modern social structures and the conflicts they generate in Africa. There are others who argue that traditional methods of dispute resolution should be confined to local communities, while the modern Western alternatives should be applied to the cities, formal sector institutions and state systems (Omeje 2008: 88). Such a categorical distinction seems both conceptually and empirically problematic because of the immense diversity and overlapping dynamics of the African heritage. Confining such mechanisms to local communities in the face of increasing hybrid large-scale violent conflict is to deny any potential and possible contributions such approaches may have for contemporary peace efforts.

The impact of Western cultural influence on traditional African values and practices is real, but change is not confined to African tradition, as any socially constructed realities, such as Western culture itself, is not static. Furthermore, if considered relevant, the application of local resources to modern conflict may have an impact where liberal peacebuilding has failed. But the question is, will that still be African culture? It will certainly be a new cultural hybrid form; but culture is something that is changing and not indefinitely static. Even African states themselves are not local to Africa. They are cultural constructs that Africans have borrowed from a principle which was established by the peace of Westphalia in Europe 1648 ((Fischer 2012). The important thing is that Africans do have ideas and world views that they can put

on the table relating to their efforts to build and promote peace in their continent and the world. This means that what is practiced in Africa today could be a form of hybridity where two dimensions of conflict resolution procedures are used complementarily; that is, the Western model and the African.

The usage of the *Ubuntu* principles has also been critiqued in the context of the South African TRC. While the application of the principles of *Ubuntu* to the South African TRC purportedly helped the peace process to work by promoting peace and reconciliation after the several years of apartheid regime, it was far from perfect. One of the criticisms of the TRC process was that forgiveness, as part of reconciliation, was involuntary. My informal conversations with several South Africans revealed that reconciliation in South Africa has been politicized and is not organic, because people were not allowed to decide on the path. One of them said that forgiveness was presented as a moral obligation and responsibility as encouraged by commissioners (KI 41:17/11/16).¹² The question is thus, who benefits from this concept of forgiveness? Certainly, it benefited the perpetrators of the apartheid violations. This means that reconciliation was not in the interests of both parties as could lead to peaceful coexistence, as claimed by the *Ubuntu* principle.

Similarly, *Gacaca system*,¹³ a Rwandan traditional conflict resolution mechanism applied to deal with post genocide justice and reconciliation had many weaknesses; First, it was only identical by name to the old *Gacaca* due to a marked discontinuity, so that it was largely an invented tradition. Second, state intervention through legal

¹² Interview 41, with a transitional justice specialist: 17/11/2016

¹³ *Gacaca court* (in Kinyarwanda) means a system of community justice inspired by Rwandan tradition where *Gacaca* can be translated as “justice on the grass”. The modern *Gacaca* was reinvented to try those accused of involvement in the 1994 genocide. The courts were set up to speed up the prosecution of hundreds of thousands of genocide suspects awaiting trial. It worked alongside ICTR and Rwandan national courts. It finished its work in 2012.

and social engineering made it more of a state political tool than what it used to be (Ingelaere 2008: 32).

Another objection to local approaches like *Ubuntu* is that a limited sphere of applicability restricts their national relevance. This is because they depend on the existence of community relationships and values to which they can refer and that provide the context for their operations. This means conflict within and between families, between neighbours, within and between villages or clans lend themselves rather easily to traditional approaches. It is difficult to tackle conflict that involves members of other communities that adhere to another law, be it another customary law or formal statutory law. Bleiger and Brigg (Boege 2011: 443) further add that conflict between neighbouring local communities poses relatively small problems as some overarching customary principles might be developed and applied that allow for the temporary creation of common ground, whereas conflicts between local communities and outside actors, for example, state authorities and multinational enterprises, pose much larger problems regarding the applicability of traditional initiatives.

But it is important to note that conflict and culture are context-specific. The claim of universal relevance is the reason liberal peacebuilding is being criticized in the first place. While every situation is unique, lessons can be learnt from experiences of different societies and their peacemaking techniques. In South Sudan, empirical evidence exists where local justice measures have been applied beyond ethnic borders. Leonardi et al. (2010: 66), for example, observe that there has been no failure of local practices to address interethnic conflict despite fear of the post CPA demographic changes where many returning refugees prefer to settle in towns than in rural areas, producing more ethnically mixed areas. They argue that the local courts appear to be settling large numbers of cases between people of various ethnic groups without too much difficulty.

There is also a critique of *Ubuntu* based on human rights such as gender insensitivity and certain practices that contradict human rights principles. For example, the peacemaking role is the preserve of older men. According to Alai (2012: 128), local

approaches as restorative justice face several challenges regarding the upholding of international standards. I will come back to this in Chapter Six.

2.3 Conflict and peacemaking

The term conflict has been defined in many ways by different scholars. Ramsbotham et al. (2011: 30), for example, define it as the pursuit of incompatible goals by two different groups, and emphasize its usage to apply to any political conflict, whether it is being pursued by peaceful means or by the use of force. Armed conflict, on the other hand, is defined as a dispute where the parties on both sides resort to the use of force and where such disagreement can encompass a continuum of situations ranging from a military attack on a civilian by a single soldier to an all-out war with massive casualties (Ramsbotham et al. 2011: 31). A typical example of armed conflict is the war raging in South Sudan since December 2013.

Based on the above definition, conflict can be violent or non-violent. This is actual violence or structural violence. Actual violence includes behaviour such as killing, beating, torture, maiming and so on (Fisher et al. 2000: 9). Structural violence on the other hand is a condition where systems (national or international) discriminate, sometimes through policies between groups, communities and nations. In this case it may be difficult to draw a clear line between, for example killing with a gun and killing through deprivation of food and other essentials of life (Fisher et al. 2000: 9). Thus, violence consists of actions, words, attitudes, structures or systems that cause physical, psychological, social or environmental damage and/or prevent people from reaching their human potential (Fisher et al. 2000: 4). This means that to address the underlying root causes and effects of combat, a peacebuilding framework, such as that embedded in liberal peace theory, may have to focus not only on state institutions and socio-economic development, but also on the human and psycho-social dimensions of post-conflict reconstruction.

2.4 Contemporary armed conflict

Conflict takes place either between states or within states but in recent decades, its nature has shifted away from inter-state to intra-state engagements where a

proliferation of ethnic, religious, cultural and resource-driven hostilities have become the major threats to international peace and security (Cheeseman et al. 2015: 165). The end of the Cold War and its immediate aftermath witnessed the advent and escalation of internal armed struggles and an increase in the involvement of ethnic, sectarian, linguistic and communal groups in intra-state wars (Bercovitch and Jackson 2009: 186-7). Unlike the inter-state hostilities, these wars are fought within nation states. Different names have been used to describe intra-state fighting. In this study, contemporary armed conflict, modern conflict, civil war and internal conflict are used interchangeably.

As a concept, contemporary armed strife has been used by conflict resolution scholars to describe intra-state conflicts, the most common form of warfare which emerged at the end of the Cold War, often between communal groups and the state (Lederach 1997: 2). For Ramsbotham et al. (2011: 31), contemporary conflict refers to the prevailing pattern of political and violent encounters at the beginning of the twenty-first century. These convergent definitions tend to suggest that the termination of the ideological struggles between the Eastern and Western blocs in the late 1980s witnessed a reduction in inter-state wars, which characterized most of the twentieth century, and an increase in the number of internal wars from the early 1990s. Similarly, Kaldor (1999) defines contemporary conflict as New War; Azar, as protracted social conflicts; Burton, as deep-rooted conflict; and Benjamin, as intractable conflict (Gawerc 2006: 436).

The labels used to describe contemporary bellicose encounters in the above definitions are instructive and they apparently point to the nature and forms of the conflict. Lederach (1997: 23) observes that many of the key characteristics of contemporary antagonisms follow from their internal nature where conflicting groups live in close geographic proximity and sometimes as neighbours and yet are locked into long-standing cycles of hostile interactions. These conflicting groups may have direct experience of violent trauma that they associate with their perceived enemies and which is sometimes tied to a history of grievance and enmity that has

accumulated over generations, and such disputes are characterized by deep-rooted, intense animosity; fear; and severe stereotyping.

Depending on their underlying causes, contemporary disagreements took different forms in the aftermath of the Cold War. Roberts (1994:6), cited in Paris (2004: 41), argues that at the end of the Cold War, it was the “apparently remorseless rise of ethnic and communal conflict” that became a major challenge for the international community”. Egwu (2007:406), in Omeje (2008), observes that in Africa, the end of the Cold War, especially in the 1990s and the early 2000s, witnessed an intensification of the incidence of intra-state conflicts; horizontally between different socio-ethnic and cultural aggregates within a national territory and vertically between groups who felt excluded and marginalized from existing power structures on the one hand, and the central authority on the other. But what are the links between the Cold War and the emergence of internal wars? Why were and are the wars concentrated in the global South and particularly in the African continent? What makes these wars intractable? Who is well placed to provide solutions to the grievances that cause these wars? The discussions in this chapter will attempt to provide answers to these questions.

The conditions that promoted the emergence of internal discord in Africa and other parts of the world can be explained in terms of the political and ideological conditions that prevailed during and after the Cold War. According to Lederach (1997: 5), during much of the Cold War the superpowers were never directly engaged in armed combat in their own territories; instead, most wars were proxy, fought through, in, or over client states aligned with the superpowers; and given their colonial history and the scramble for territorial dominance by Western states, Africa became an easy prey and was one of the continents where most of these proxy wars were taking place. This bipolar context in general had two effects; firstly, it suppressed many latent conflicts within the sphere of influence of either of the superpowers as was the case in Eastern Europe and Central Asia, as for instance, in Armenia, Azerbaijan and the Balkans (Lederach 1997: 5). Secondly, it increased the volatility of, and exacerbated conflicts in the developing world as, for instance, in the Horn of Africa

and Central America, where it created a dominant frame of reference in which the primary explanation for armed conflicts was an ideological struggle between East and West (Lederach 1997: 5-6).

Many of these conditions however, suddenly changed when the Cold War ended in the late 1980s and early 1990s when tensions between the superpowers declined and neither the Soviet Union nor the United States was willing to maintain Cold War levels of military and economic assistance to their respective allies, particularly in parts of the world that were strategically perceived as insignificant, such as sub-Saharan Africa (Paris 2004: 16). This means that countries that had been battle grounds for proxy wars and had depended on foreign aid from the superpowers and used it to monopolize domestic political power and to suppress internal opposition, lost their ability to quell internal dissent and became vulnerable to intra-state violent struggles. Therefore, depending on the region, it can be argued that the bipolar context served both to suppress conflict when it was ongoing and to intensify it at the end of the Cold War; where the suppressed internal grievances and conflicts resurfaced in the immediate post-Cold War period in the form of intra-state clashes among various domestic actors.

Conflict scholars have outlined several causes for contemporary armed engagements. Regehr (1992), cited in (Lederach 1997: 8), argues that the primary bones of contention in intra-state affairs concern governance and often involve the pursuit of autonomy or self-government for certain regions or groups; and that at least half of the current wars have to do with the redefinition of territory, state formation or control of the state. These wars are often called ethnic conflicts, given that what is at issue are group and community rights and not just individual human rights. Important to bear in mind is the community aspect of the conflict which I will return to in chapters four and five when discussing indigenous mechanisms of peacemaking in South Sudan.

In opposition to this view, Friberg (1992), in (Lederach 1997: 8), insists that it is more accurate to name these “identity conflicts” rather than ethnic conflicts, given that there is nothing innately ethnic about them; rather it is often the failure of governing

structures to address fundamental needs, provide space for participation in decisions, and ensure an equitable distribution of resources and benefits that makes identification with a group so attractive and salient in a given setting". The latter argument tends to resonate with the situations in some countries experiencing civil war in Africa; South Sudan, for example, seceded from the North in 2011 after over four decades of identity conflict.

As Regehr has observed, "Identity conflicts emerged with intensity when a community, in response to unmet basic needs for social and economic security, resolves to strengthen its collective influence and to struggle for political recognition. Almost two thirds of the armed conflicts can be defined as identity conflicts, and in the last two decades, some estimates count as many as 70 political conflicts worldwide that involve groups formally organized to promote collective identity issues" (Lederach 1997: 8). It can therefore be argued that the proliferations of intra-state wars following the end of the Cold War and the need to find appropriate mechanisms for resolving them and building sustainable peace is what led to the evolution of peacebuilding.

2.5 Conflict Resolution and Peacebuilding

Peacebuilding is a conflict resolution method that goes beyond the more limited objectives of conflict management and conflict settlement and aims at the complete transformation of the political, economic, and social structures within a nation that can lead to violent conflict; and to achieve a durable and lasting peace, peacebuilding utilizes and combines the whole range of conflict resolution methods and approaches which includes: mediation, legal processes, preventive diplomacy, peacekeeping, humanitarian intervention, regional task-sharing, non-official diplomacy, and justice and reconciliation approaches in a comprehensive, multidimensional and long-term conflict transformation project (Bercovitch and Jackson 2009: 168). Given the intricate nature of internal conflicts, there has been an upsurge of interest in recent years in the role of indigenous approaches. Boege (2011: 432) for example, argues that since most conflicts are context-specific, traditional approaches to conflict resolution that are grounded in the cultures of

conflict-affected people play an important role in contemporary conflict resolution and that sustainable peace can only be achieved by involving them; hence the focus of this study. This study focuses on exploring the potential and limitations of indigenous procedures in view of their application to justice and reconciliation in the aftermath of violent conflicts. To put the study into perspective, I will start by conceptualizing conflict resolution.

2.5.1 Conflict resolution concept

Conflict resolution means a range of formal and informal activities undertaken by the parties to a conflict, or outsiders, designed to limit and reduce the level of violence in conflict and to achieve some understanding on the key issues in conflict, a political agreement or a jointly acceptable decision on future interactions and distribution of resources (Bercovitch and Jackson 2009: 1). According to Ramsbotham et al. (2011: 31) conflict resolution is a comprehensive term which implies that the deep-rooted sources of conflict are addressed and transformed. But how are the sources of conflict addressed and transformed? In most cases these processes involve compromise from both parties to the conflict in the interests of peace and co-existence; and addressing deep-rooted sources of conflict means peacebuilding engagements at various levels involving multiple actors and mechanisms including traditional leaders and methods.

The above definitions suggest that conflict resolution is not an event but a process that has several stages and levels; which involve acknowledging that there are escape routes to the achieving of peace through the use and involvement of a range of initiatives and actors both from inside and outside the conflict context. It can therefore, be argued, based on the liberal peace theory and practice, that for peacebuilding to address the causes of discord and build sustainable peace in the aftermath of violent conflict, all the stakeholders, local resources, societal agencies and institutions may have to be involved. Similarly, Bercovitch and Jackson (2009: 10) state that the new approaches to conflict resolution are becoming increasingly multi-dimensional that is including UN peace operations, regional organizations, global, regional and local Non-Governmental Organizations (NGOs) as opposed to

the previous approaches which are best described as mono-dimensional and narrowly defined. This translates into the idea that new strategies for conflict resolution have evolved at the various levels and that they are designed to produce inclusive structures and long-term settlements of disputes. But how this will work in practice requires scrutiny as the international community continues to exclude local institutions and actors from participating in conflict resolution and peacebuilding after civil wars. South Sudan is a case in point where not only were the customary authorities excluded from the 2005 CPA negotiations and subsequent peacebuilding efforts, but also civil society and other armed groups and political parties (Young 2012). Although the 2015 ARCSS peace process involved civil society, it did not incorporate indigenous mechanisms in its implementation programming.

2.5.2 Peacebuilding concept

The post-Cold War shift in conflict nature, led to the evolution of the concept of peacebuilding which aims at preventing the resumption or escalation of violent encounter and establishing a durable peace (Newman et al. 2009: 3). This also meant a shift in the UN's traditional peacekeeping procedures which could not match the emerging post-Cold War peace and security challenges. The traditional international approach was intended for inter-state conflict through monitoring ceasefires between hostile states (Richmond 2002: 7).

The peacebuilding concept was popularized and gained international prominence in the immediate aftermath of the Cold War when the then UN Secretary General, Boutros Boutros-Ghali, presented his 1992 policy statement, *An Agenda for Peace*. He defined peacebuilding as “action to identify and support structures which will tend to strengthen and solidify peace to avoid a relapse into conflict” (Boutros-Ghali 1992: 11) The concept was initially defined as a post-conflict activity aimed at consolidating peace; and the policy document describes the practical aims of peacebuilding as: disarming the previously warring parties and the restoration of order, the custody and possible destruction of weapons, repatriating refugees, advisory and training support for security personnel, monitoring elections, advancing efforts to protect

human rights, reforming or strengthening governmental institutions, and promoting formal and informal processes of political participation (Boutros-Ghali 1992: 32)

Although transitional justice mechanisms would later form a vital component of post-conflict peacebuilding, at that early stage of the concept development, the policy statement was silent about justice and reconciliation as key strategies in situations where human rights are grossly violated and abused. Moreover, if peacebuilding is geared towards identifying structures and building capacity, institutional or otherwise, then the question of agency should not be framed in terms of the primacy of the international over the local, as is the case today, but rather in terms of an exchange that affects agency on the ground and in the local area (Jabri 2013: 5).

The scope of the UN's peacebuilding concept progressively expanded over the years, so that in subsequent documents peacebuilding was considered as a range of activities that included preventive diplomacy, peacemaking and peacekeeping (Jenkins 2013). In the Supplement to An Agenda for Peace (Boutros-Ghali, 1995), for example, it was recognized that peacebuilding required multifunctional peace support operations that worked across a range of security, humanitarian, economic, and political areas. Following an initial military intervention phase, as the situation stabilized, responsibility would be handed over first to civilian agencies and then to local agents (Young 2012: 5). The questions are: was the role of local agents as key stakeholders considered in international peacebuilding programming and interventions or were these simply rhetorical statements meant to silence local agents while restricting them to a passive, supporting role? I will come back to this in Chapter Six.

The 2000 Brahimi Report further, conceptualizes peacebuilding as not only ending violent conflict, but also aimed at seeking to address its underlying root causes. The report has defined peacebuilding as “activities undertaken on the far side of conflict to reassemble the foundations of peace and provide the tools for building on those foundations something that is more than just the absence of war” (Brahimi, 2000:3) cited in (Bellamy et al. 2010: 129). The report provided a wide range of peacebuilding activities designed to help avoid a return to violent conflict, the promotion of peaceful

co-existence and the use of non-violent means for resolving conflict. It recommended the addition of further peacebuilding tools and strategies, including the establishment of a peacebuilding Unit in the UN, the adoption of quick impact projects (QIPs), and the creation of special funds for disarmament, demobilization and reintegration (DDR), and electoral assistance programmes (Jenkins 2013). This definition takes the concept further to include the idea of positive peace which, according to Galtung (1976), is a condition of social justice and pluralism in which the root causes of conflict are, if not fully eliminated, successfully managed through nonviolent processes of political representation, negotiation and compromise. The Brahimi Report implies that peacebuilding is in effect, a hybrid of political and developmental activities targeted at the sources of conflict.

Annan (2003) cited in (Bercovitch and Jackson 2009: 169-70), attempted to systematize the UN's peacebuilding activities even further by arguing that effective peacebuilding required better coordination and synchronization of efforts, carefully conceived strategies, flexibility in implementation, institutional capacity, proper evaluation, a "lesson learned" process, system-wide guidelines and generic methodologies. It can be argued that the Annan efforts in their search for a more robust and effective peacebuilding architecture resulted in the establishment of the UN Peacebuilding Commission; but has it incorporated mechanisms other than the liberal (Western) peacebuilding instruments? The answer is broadly in the negative, though generally, the peacebuilding concept has come to mean many things which, in terms of the liberal peace theory, includes: ending overt violence, building democracies, strengthening the rule of law and respect for human rights, promoting justice, reconciliation and stability and enhancing development (Paris 2004). However, despite the expansion and modification of the concept, it has remained elusive and contested among academics and policymakers with no consensus regarding definition, approaches and practice. The different interpretations of the concept of peacebuilding reflect the variations in approaches and priorities of agencies, institutions, actors and countries involved in building peace and post-war state reconstruction (Jenkins 2013).

In view of the above peacebuilding conceptualization, Bercovitch and Jackson (2009: 173) state that peacebuilding generally entails concerted action by international third parties working both in a military and civilian capacity, employing a mixture of short-to- medium and long-term political and development activities that are aimed at recovering from war, preventing a relapse into violent conflict, strengthening local capacities for peaceful conflict resolution and creating the conditions for genuine long-term human security. This argument may well be valid but the element of “strengthening local capacity”, including the application of local initiatives in contemporary peace processes, seems to have always been lacking in liberal peace theory and practice.

However, Lederach (1997: 20-1) defines peacebuilding as a comprehensive concept that encompasses, generates, and sustains the full array of processes, approaches, and stages needed to transform conflict towards more sustainable, peaceful relationships. The term involves a wide range of activities and functions that both precede and follow formal peace accords (post-conflict). Lederach’s framework suggests a comprehensive approach to the transformation of conflict that addresses structural issues, the social dynamic of relationship building, and the development of a supportive infrastructure for peace. The orientation of this study is along the lines of Lederach’s definitions. It discusses peacebuilding as a concept that transforms conflict by addressing structural issues (justice), and engaging with the social dynamic of relationship-building (reconciliation) and the development of local infrastructure for peace (local approaches). But the concept of post conflict is problematic; thus, its meaning in the context of this study needs to be clarified.

2.5.3 Post-conflict as a concept

The historical perspective of conflicts in South Sudan and international efforts at peacemaking will be discussed in chapter three. But it is important to put South Sudan as a case study into perspective in this theoretical chapter, to provide a better understanding as to whether it is a post-conflict society, a country in conflict or both. So, what is South Sudan’s status in relation to armed conflict? I would argue it is a post-conflict state in relation to the 2005 Sudan CPA which politically settled the two

decades of North-South clash; but it is also a country in conflict in relation to the hostilities which erupted in December 2013 and are still raging despite the 2015 ARCSS, signed between the government of the RSS and the SPLM-IO. However, it is important to analyse what conflict and post-conflict situations are;

The idea of armed conflict relates to a situation in which organized groups engaged in acts of violence against each other, for instance, a state against a rebel movement and this is conducted in accordance with a dominant narrative, whereas, “post conflict” would mean the end of such violence, and a return to normalcy and peace (Lambach 2007). Such an understanding of post conflict makes it hard to provide a clear idea of extensive violence where open violence has dragged on, but in which there has been a slowdown in violence, such as the case of Northern Uganda.¹⁴ For example, a conflict is considered to have ended when “violence is no longer explained in terms of the dominant narrative of conflict”. According to this explanation, even if South Sudan has continued to experience different forms of violence after the signing of the CPA in 2005 through to its independence, South Sudan can be considered a post-conflict country. However, it is a country in conflict since the eruption of the 2013 crises. Viewing conflict and post-conflict situations as social constructs, “discursive delimitations of the kind of behaviour that is to be expected and allowed in a specific set of circumstances”, would mean a narrative of peace is put at the centre of the definition of post conflict Lambach, (2007:10) in (Tom 2011).

For Call (2008: 175), the concept of post conflict has three uses: 1) it refers to the period when open warfare is said to have come to a virtual end either through a peace agreement or a military victory, 2) it refers to “societies that have gained a

¹⁴ Since the signing of the cessation of hostilities agreement between the rebel movement, LRA and the government of Uganda in 2006, the government of Uganda has encouraged internally displaced persons (IDPs) to return to their homes (manning,2009) as it considers that the situation has become a post conflict one. Yet the LRA has not laid down its arms, but has retreated to the DRC. In this case, conflict in Northern Uganda has diminished with the retreat of the LRA to the DRC.

formal peace agreement, even when the political violence that the peace agreement was designed to end has not been significantly diminished”, though this should more accurately be called a “postaccord” situation, 3) it relates to the “apparent military defeat of one side in armed conflict, but more particularly the fall of a regime associated with the army”. According to Call, the first meaning of the term post conflict tends to be more useful than the last two, since in such a situation there are changes that come about, including security sector reform (SSR), the building of more effective state institutions, elections, DDR, reconciliation and transitional justice initiatives, development programmes and the reconstruction or building economic institutions. Based on Call’s three interpretations, South Sudan lies in the interface between post-conflict and postaccord. This thesis uses the first sense of the idea of post conflict adopted by Call.

2.5.4 Local approaches in Africa

Local approaches are a part of peacebuilding and African conflict resolution. Although often used interchangeably, traditional and local are two different terms. A conceptualization of the two terms will be provided in Chapter Four. Despite its long history of practice in different societies and communities in the continent, there appear to be deliberate efforts by supporters of modern strategies to undervalue the local approaches. Broadly speaking, the international initiatives in Africa to resolve conflict, build peace and encourage development, for example, have usually neglected home-grown resources and capacities (Murithi 2008). Nevertheless, in Sub-Saharan Africa, local and traditional solutions have been widely applied in post-conflict situations. They revolve around mediation, arbitration, compensation and reconciliation. The *Gacaca* which was employed to deal with the aftermath of the Rwandan genocide (Clark 2014); the ‘*Mato Oput*’,¹⁵ which was used to re-integrate

¹⁵ *Mato Oput* is an Acholi traditional ceremony that aims to reconcile and re-establish relations between the clan of the victim of a killing and the clan of the killer by “cooling of hearts” of both parties, building forgiveness, and providing justice and compensation. It involves both parties drinking from the same calabash of bitter roots of the *Oput* tree (Mato Oput Project, 2009).

ex-LRA combatants and to reconcile communities in Northern Uganda (Ogora 2009; Allen and Macdonald 2013); and the '*Fambul Tok*'¹⁶ used to reconcile communities and to deal with the legacy of the Sierra Leone's civil war (Graybill 2017: 145) are examples of recent usage of these mechanisms in African post-conflict societies. These mechanisms had their successes and failures.

The *Gacaca courts* eased the burden of the International Criminal Tribunal for Rwanda (ICTR) and national courts that were strained by caseload of genocide suspects. It enabled local communities to participate in the process and thereby provided opportunity for catharsis as it enabled them to know the truth, bring about closure and reconcile. However, the new *Gacaca* was an invented tradition that departed from the old *Gacaca* in many ways. Attendance was involuntary and its programme and process were apparently determined and influenced by the state. A critique also runs that it reflected victor's justice which contradicts the way old *Gacaca* traditionally worked. Huyse (2008: 12) summarizes the critiques by stating that while reconciliation as a way to national unity was one of the stated objectives when the *Gacaca* tribunals in Rwanda became part of a broader transitional justice policy, their actual experience, however, raises serious doubts about whether the outcome can be called successful.

Mato Oput traditional ceremony facilitated the reintegration of Ex-LRA child-soldiers and combatants among the Acholi and contributed to peace in Northern Uganda by promoting reconciliation. But LRA conflict impacted as well other ethnic sub-regions in Northern Uganda such as the Teso and West Nile. The *Mato Oput's* lack of national relevance meant that it could not be applied in the entire Greater North. This

¹⁶ *Fambul Tok* means "family talk", built upon the Sierra Leone's family talk's tradition of discussing and resolving issues within a family circle. It is a community-owned local reconciliation programme that brings together perpetrators and victims of violence or abuse through conducting truth-telling, confession, apology, forgiveness and cleansing ceremonies rooted in local traditions. It was applied by rural communities in Sierra Leone to deal with the legacy of their decade long civil war.

means the mechanism does not adequately address the issue of communal transitional justice between parties of different ethnicities. So far, much of the work of academics and practitioners about traditional reconciliation in Northern Uganda focused on the Acholi people (The Mato Oput Project 2009).

The Sierra Leone's *Fambul Tok* mechanism was designed to address the roots of conflict at the local level. It covered areas in rural communities where Special Court and TRC could not reach; it was inclusive of women and youth population historically excluded from such ceremonies and participation was voluntary unlike in the past, where a community decision to reconcile made participation a mandatory (Graybill 2017: 148). Although it may have deviated from the original traditional practice, it incorporated progressive values such as inclusivity and representation of the rights and agency of women and youth.

So, as with *Ubuntu*, local peacemaking schemes are not without inadequacies. While they have strengths which can be leveraged, being inclusive and participatory, open and transparent, cost-effective, credited with legitimacy from the community, aim at restorative justice, healing and reconciliation (Boege 2011); they are also marred by several weaknesses. I will come back to this in Chapters Four and Six.

2.6 Hybridity

The term hybridity has recently gained a prominent usage in peacebuilding, particularly in the study and practice of transitional justice, to describe courts that have been developed in post-conflict settings, such as Sierra Leone, Kosovo, East Timor and Rwanda. Belloni (2012), cited in Yamashita (2014: 1) defines hybrid as a state of affairs in which conventional and local peacebuilding coexist. This implies that the key point of hybridity pertains to the relationship between the liberal and non-liberal, and it can further be argued that the introduction of new concepts in peacebuilding such as local and hybridity is another reason peacebuilding has become the focus of vigorous debate in recent years.

While conventional forms of peacebuilding are modelled on liberal norms and ideals such as, state sovereignty, democracy, market economy, human rights, rule of law,

and transparency in governance, the concept of hybrid peacebuilding in contrast, is designed to include, as a part of the strategies to achieve sustainable peace in post-conflict societies, diverse institutions and norms that deviate from the predominant, Western model of peacebuilding (Yamashita 2014: 1). More specifically, hybrid peacebuilding signals a willingness to accept and work with traditional institutions and values based on religious, ethnic and kinship connections, and to explore how they can be combined with those of modernity to bring a lasting peace (Yamashita 2014: 1). Consistent with this argument, Richmond (2011:17) advances the concept of hybridity and emphasizes that it should have a place in peacebuilding which would represent both the capacity of international liberal and local peacebuilding actors and projects to engage with each other, which might perhaps be to the benefit of the local version of peace. This resonates with the focus of this study: to explore the relevance and potential of local approaches for possible application to modern conflict in a complimentary fashion.

Drawing on Sierra Leone's experience with internationally-sponsored peace, for example, Francis (2012: 19) observes that the missing element in liberal peacebuilding is the recognition and utility of hybridity between the external peacebuilding programming and local resources, societal agencies and institutions to ensure local participation, ownership and long-term sustainability. In keeping with this position, Murithi (2008) argues that incorporating the insights and the best practices of local processes into official peace, to create a hybrid peace process, can improve the efficacy of peacemaking. But the expectation of a hybrid peace process as a final solution to improve the effectiveness of peacemaking and peacebuilding is an exaggeration. First, the experience of countries that have experimented with Hybrid tribunals or Special courts, like Rwanda and Sierra Leone, has shown the process to be marred by more tension than productive cooperation. Second, what is lacking in this line of argument is the recognition that in the process of applying the concept of hybridity, power relations between the liberal and the local strategies may end up in favour of the liberal peacebuilding model, particularly in terms of structure, skills, resource capacity and wider applicability.

The significance of hybrid approaches to the resolution of contemporary conflicts and to building sustainable peace is however grounded in the idea of hybrid political order and hybrid violent conflicts. Boege (2011: 433) argues that regions of fragile statehood, such as those found in the global south, are generally places where diverse and competing institutions and logic of order and behaviour overlap and intertwine. This can be seen in the logic of formal state, the logic of informal traditional societal order, the logic of globalization and international civil society with its abundance of highly diverse actors, such as NGOs and International organizations among others. In such an environment, the state must share authority, capacity and legitimacy with non-state actors and institutions; this is a hybrid political order which considerably differs from the Western model of state.

Conversely, many large-scale contemporary violent confrontations are hybrid socio-political exchanges in which state-centric and non-state-centric traditional and economic factors overlap and mix. Thus, in violent disputes of this kind, it is argued the state has lost its central position both as an actor and framework of reference (Boege 2011: 433) This means, therefore, that the hybrid nature of many contemporary violent disagreements in the global south needs to be taken into consideration when it comes to post-conflict peacebuilding. The idea of hybrid peace appears to show a paradigm shift in peacebuilding strategy and offer some remedies for concerns about recognition, local participation, ownership and sustainability. It should be noted that hybrid peace allows the local to regard peacebuilding as a more flexible and dynamic process as it enables a critical reassessment of the global-local relationship in peacebuilding (Yamashita 2014: 2)

However, as with liberal and local peacebuilding approaches, hybrid peace is not without its problems. According to Yamashita (2014: 3) two issues particularly stand out; the first is related to the effectiveness of hybrid peacebuilding and the question of whether it proves a better strategy. The argument here is about clarity of aims; whereas liberal peacebuilding has a relatively clear idea of what to achieve to bring stability and peace, hybrid peacebuilding stems from scepticism towards such universalist benchmarks and pursues the goal of recognition. Linked to this is the

view that these two worldviews might be incompatible. For example, while the international entity pursues the objective of retributive and punitive justice towards violators of human rights as a fight against impunity, the local approaches pursues restorative justice to reinstate both victims and perpetrators of human rights violations with the idea of reconciling them and their communities to peaceful coexistence based on the *Ubuntu* principles. It is likely these two disparate goals may clash and lead to tensions; a point I will come back to in chapter six.

Since hybrid peacebuilding emphasizes unique local conditions and criticizes the one-size-fits-all approach of the liberal model, peacebuilding practices under this approach do not submit themselves easily to an assessment that uses an international framework or cross-case analysis. Again, to point out that the social conditions and the resultant peacebuilding efforts are “hybrid” does not make the concept a useful guide for a better implementation of international assistance. For this to happen, a policy-relevant framework that could enable constructive assessment of the actual practices would be needed (Yamashita 2014: 3).

The second, concerns the ambivalence of the hybrid peace argument when it comes to its suggestions for the future of peacebuilding. Whereas liberal peacebuilding maintains that the implementation of the liberal systems and values will lead to lasting peace, hybrid peacebuilding underlines the possibility that the introduction of liberal norms and institutions is not the only way to sustainable peace. But hybrid peacebuilding can be construed as meaning the establishment of conditions of lasting peace through a proper combination of liberal and non-liberal systems and values. In so far as this stance sees the merits of liberal institutions only in relation to the objective of sustainable peace, hybrid peace does appear to signal a retreat of liberalism from its current dominance as the only peacebuilding paradigm and on the other hand, it is possible to see hybrid peace as a renewed attempt to expand liberalism in peacebuilding (Yamashita 2014: 3).

Interestingly, despite these apparent weaknesses of hybrid peacebuilding concepts, there are multiple examples of a local turn in peacebuilding as explained in chapter one, whereby donor states, international organizations and INGOs pay more serious

attention to local-level dynamics even if this may be mainly for instrumental and rhetorical reasons (Mac Ginty 2008a). This implies that peacebuilding scholars and practitioners are aware of the legitimacy and advantages to be gained by cooperating with local partners and providing space for their complementary role.

2.7 Human Rights and international treaties and laws

Concerns about respect for human rights principles have in recent years come to occupy centre stage in global politics and international relations. Laws to protect and safeguard human rights have been enacted by international community at different periods, since the end of the World War II; prominent among them are the international human rights and humanitarian laws. But the different conceptions of human rights across the world have sometimes attracted serious debates. According to Goodhart (2005: 353), most theoretical discussion of human rights focuses on the contentious debate over their validity, and the debate primarily concerns what moral significance should attach to the origins of 'universal' human rights in the philosophy of Christian Europe and the Enlightenment. This debate pits universalists, who hold that human rights reflect timeless and absolute moral truths, against cultural relativists, who assert that moral truth or validity is an expression of the values and beliefs of a specific culture.

Universalists maintain that some moral principles are valid regardless of when and where they originate, and further, claim these principles have the status of metaphysical truth; hence human rights are universally valid because they derive from such principles. Among the claims and principles to which this transcendent status is sometimes ascribed are autonomy, dignity, equality, and human needs (Goodhart 2005: 353). The primary difficulty however, with moral universalism lies in showing that certain moral principles are in fact true. Despite numerous sophisticated attempts to provide a persuasive trans-cultural moral justification for human rights, profound disagreement persists about their philosophical foundations. There are different worldviews among different peoples in distinct parts of the world. For example, and as discussed above, these could be the liberal understanding of life being individualistic or the African worldview that it is communitarian.

On the other hand, according to relativists' views, cultures differ so widely in their moral norms and practices that no principles can be valid across all of them. While they do not typically reject the existence of moral truth, they hold that truth or validity can be assessed only within the moral framework of a specific culture (Goodhart 2005: 354). Unlike the universalists, then, relativists conceive the validity of a moral principle as closely related to its origins; that concepts of human rights originated in the West, means that they must reflect distinctively Western values and beliefs.

Whether human rights are valid in non-Western cultures is for relativists a question of whether the values and practices of those cultures include or can support human rights and in what form. In this regard, the earlier discussions in this chapter about *Ubuntu* implies that its values and practices support human rights; an argument that some universalists may contest. The main difficulties with cultural relativism are that it presumes a high degree of homogeneity within cultures, a presumption belied by internal disagreement and contestation, and that it remains unclear why widespread acceptance of norms and practices alone should count as a moral justification for them (Goodhart 2005: 354). The difficulties identified in both perspectives could mean that there is a need to offer a balanced and reasoned perspective as to the benefits and contributions of both, and to examine whether they can practically engage and work together in terms of interventions in dealing with post-conflict justice issues to build sustainable peace. This entails acknowledging that, indeed, some human rights principles are universal; and that at the same time, it is also true that truth and validity can better be assessed within the moral framework of a specific culture. This study is based on the social constructionist approach, and so a relativist perspective may provide a better philosophical foundation.

However, the legal universalism of human rights signifies their status as principles of international law; and where positive international law is the body of law generated by agreements among states: treaties, conventions, and so on, as positive laws bind the signatories of specific instruments and are universal insofar as the instruments in question are acceded to by virtually all states (Goodhart 2005: 354). It follows that human rights conventions are a form of positive law, some of which enjoy near-

universal status through the ratification by most states. Though the evolving legal universalism of human rights is hampered by the constraints of the international system in matters of jurisdiction and enforcement (Novak 2015), in recent years international instruments of justice such as the ICC have been increasingly applied to deal with legacies of human rights abuses across the globe, regardless of contextual relevance. But, generally, there is growing acceptance of human rights as obligations binding upon all, and it is on this basis that in Chapter Five, I will critique the local justice mechanisms of the Dinka and the Nuer of South Sudan.

The cultural relativist perspective and the African philosophy of peace seem to exert a degree of influence on the way certain scholars perceive how international systems work, especially regarding human rights and their promotion through international agencies and justice instruments. These human rights movements are grounded on the principles provided in the Universal Declaration of Human Rights (UDHR) adopted by the UN General Assembly in 1948, and the two subsequent international covenants on civil and political rights and on economic, social and cultural rights, adopted in 1966 and based on the declaration (Boyle 2005: 343). Though not legally binding, the declaration has become the foundation for establishing obligatory legal norms to govern international behaviour regarding the rights of individuals.

The role that is being played by modern human rights movements which have sought to internationalize the promotion of fundamental rights and freedoms based on liberal international philosophy has raised concern among some scholars. Murithi (2005: 341), for example, holds that human rights need to preserve the dignity of all people and to ensure a more dynamic and culturally inclusive understanding of human rights. He maintains that, ever since the UDHR was adopted by the UN General Assembly, on 10 December 1948, there has been an ongoing debate about how human rights standards were formulated, codified and adopted by appealing mainly to Western cultural and philosophical traditions; whether the absence of other cultural belief systems during the definition and drafting of the UDHR necessarily invalidates the universality of the current human rights discourse; whether these standards are truly representative of a global consensus on notions of human dignity;

and whether the UDHR is really complete in its formulation. He reasons that if there is indeed a Western bias in the human rights discourse then the current human rights paradigm is excluding lessons that can be learnt from others (Murithi 2005: 341).

The current understanding of, and discourse on, human rights tends to promote individualism as opposed to the communal lifestyle of other cultures, particularly African societies, such as that based on the principle of *Ubuntu*. The notion of *Ubuntu* sheds light on the importance of promoting human rights through the principles of reciprocity, inclusivity and a sense of shared destiny between peoples (Murithi 2005: 342). The *Ubuntu* philosophy seems to offer important resources for resolving conflict and healing the past. For example, an *ubuntuian* is diminished when others are humiliated, tortured, oppressed or treated as if they were less than who they are. As a human being through the agency of other human beings, it follows that what we do to others also impacts upon ourselves; and in the process of dehumanizing another, in inflicting untold harm and suffering, the offender is inexorably being dehumanized as well (Tutu 1999; Murithi 2005: 342). *Ubuntu* provides a value system for giving and receiving forgiveness which in turn furthers human rights in war-affected societies and countries in transition from authoritarian regimes.

The main argument here is that the notion of human obligation to other people, when the understanding of human rights focuses on individualism, tends to become marginalized, which contrasts with what people in many non-Western cultures believe to be important. This perspective questions the notion of a universal conception of justice that can be advanced by a world court. This universalizing tendency is often driven by a civilizing and modernizing imperative, which self-evidently marginalizes the others' conception of justice, as it assumes that there is one way of conceptualizing justice, which is flawed and alienating (Murithi 2012: 201).

2.8 Justice and Reconciliation

Justice and reconciliation approaches have emerged in recent years as viable strategies for national reconstruction of the moral and political order following a civil war or repressive dictatorship; and their aim is to deal with the past, particularly the legacy of massive human rights abuses, and lay the foundation for a peaceful and democratic future (Bercovitch and Jackson 2009: 151). In terms of peacebuilding, this implies that reconciliation and justice procedures have a key role in promoting the rule of law, democratization and trust-building in societies emerging from violent conflict and/or authoritarian leadership. The two approaches are a part of the broad array of measures that are used in post-conflict peacebuilding. However, despite attempts to conceptualize the terms by scholars, such as, Hayner (1994), Kritz (1995), and Lederach (1997), there is yet no generally accepted theory of reconciliation and justice (Bercovitch and Jackson 2009: 152). This means these notions are still poorly understood and envisaged. But where have these strategies come from? Bercovitch and Jackson (2009: 152), suggest that these methodologies of conflict resolution emerged in the context of the profound restructuring of the international system that took place at the end of the 1980s and that two key movements contributed to the spread of these approaches: the internationalization of justice, and the end of the Cold War.

Firstly, the internationalization of justice refers to the spread and strengthening of international human rights law and humanitarian law, as seen in a growing number of international conventions and treaties, the diffusion of human rights values and ideals, the establishment of the international war crimes tribunals and the ICC, numerous national trials of human rights abuses, the emergence of large number of human rights-based NGOs and an increasingly active civil society, and the establishment of more and more international bodies devoted to the promotion and strengthening of universal human rights (Bercovitch and Jackson 2009: 152). Similarly, Huyse (2008), observes that this period resulted in the establishment of the ad hoc tribunals of The Hague (for the former Yugoslavia) and Arusha (for Rwanda), and in the gradual spread of the principle of universal jurisdiction. But to

what extent has the internationalization of justice taken into consideration the meanings of justice in different contexts? Whose definition of justice applies? And whose definition has been internationalized? Who is involved in making and bringing justice? These are some of the concerns and questions that need answers to understand the claim and rationale for the internationalization of justice.

For example, since its establishment more than a decade ago, the ICC is still grappling with how it can bring justice to perpetrators of atrocity crimes when national courts are unable or unwilling to do so (Beitzel and Castle 2013: 42). There is resistance from some member states, signatories to the Rome statute, who tend to see the ICC as foreign, neo-colonial, far removed from the context of conflict and having over-complicated legal procedures. To many, the ICC is a politicized institution that has become an instrument of some powerful leading states to target leaders in various parts of the world such as Africa; and this view appears to be the core reason for growing sentiment among some African countries to pull out of the ICC. Burundi has done, perhaps Kenya may follow South Africa which is still in the process. There are also arguments that it is a highly ideological institution and that its focus on retributive justice is problematic.

Perhaps the challenges facing the justice and reconciliation approaches to post-conflict peacebuilding could be managed if the ICC keeps to its complementary, rather than a lead role, and looks equally to the crimes and violations in continents other than Africa. There is a need to consider the application of non-judicial mechanisms particularly those that are used in conflict settings. Advocating a hybrid approach to dealing with the past, Alie (2008), for example, argues that if the Sierra Leone TRC's recommendations, as outlined in its final report of 2004, were fully implemented, they would act as a catalyst for the social and legal reform required to address impunity and establish a culture of respect for human rights in Sierra Leone, as well as helping the social regeneration of battered communities.

Secondly, the end of the Cold War marked the moment when a large number of post-communist states in Eastern Europe faced the problems of how to deal with the repression of the past and construct stable democracies; a number of military and

civil dictatorships in Latin America, Africa, and Asia, influenced by the third wave of democracy, began to make way for more participatory forms of government; and a number of civil wars, such as those in El Salvador, South Africa, Ethiopia, Mozambique, Namibia and Cambodia had negotiated an end (Bercovitch and Jackson 2009: 152). There was thus, a sense of urgency in the quest to find suitable mechanisms for managing transitions and building stable peace in the aftermath of civil war, which contributed to the development of justice and reconciliation formulas.

2.9 Transitional/Post conflict justice

The terms “transitional justice” and “post-conflict justice” are used here interchangeably to denote the range of judicial and non-judicial mechanisms aimed at dealing with a legacy of large-scale abuses of human rights and/or violations of international humanitarian law (Kerr and Mobekk 2007: 3). These processes are designed to address the need for accountability, to provide justice and to foster reconciliation in societies in transition from authoritarian to democratic rule and from war to peace. The international Centre for Transitional Justice (ICTJ) defines transitional justice as a response to systematic widespread violations of human rights which often occur in the context of authoritarian regimes and/or civil strife; it is justice adapted to societies transforming themselves after a period of pervasive human rights abuse (Alai 2012: 124).

The terms have emerged precisely in situations following intra-state struggles waged against unjust systems of government, when more democratic governance is being phased in, but the newly empowered people feel obliged to make a case against key figures of the old dispensations Crocker (1998) cited in (Malan 2008: 133). The concept became popular particularly after the Cold War, with a huge shift in the way post-conflict states and the international community responded to the question of how to deal with those who had committed human rights abuses when a civil war, genocide or brutal dictatorship ended. The dominant strategies for dealing with serious human rights violations before the end of the Cold War were silence, amnesia and amnesty. Transitional justice seeks recognition for victims of violations and to promote possibilities for peace, reconciliation and democracy. Being both

backward- and forward-looking, transitional justice seeks to ensure accountability for past abuses while guaranteeing their non-recurrence.

Transitional justice themes include: Prosecution, TRCs, reparations, restitutions, institutional reform, amnesty, lustration, memorialization and traditional justice mechanisms (Wachira et al. 2014: 185). Some of the transitional justice methods that have been adopted by governments in societies in transition include: criminal prosecutions, truth seeking, reparation programmes, and the reform of key institutions including the security sector and the judiciary (Alai 2012: 124). But in recent years, prosecutions have been greatly privileged over other procedures. This appears to be the work of agents of liberal peacebuilding, including; civil society organizations, donor agencies and rights movements that tend to push for trials regardless of the context and political circumstances that characterize societies in transitions. Moreover, transitional justice scholars have increasingly pointed to the failure of many donor-driven transitional justice initiatives to deliver a form of justice that is meaningful to the worldview of victims and survivors of atrocity. The current transitional justice approach is not sensitive to issues of identity, culture and resources and not rooted in local practices and understanding of justice

The focus on accountability for violations of civil and political rights has commonly resulted in the exclusion of issues of past and ongoing economic inequality and structural violence. Lessons from these interventions have led to arguments that transitional justice must encompass an agenda deliberately focused on socio-economic challenges that are related to the root causes of many violent conflicts. For the sake of clarity however, this study focuses on prosecutions, TRCs and local justice mechanisms.

2.9.1 Prosecutions (Retributive justice)

The theory and rationale behind justice approaches to transitions is that the investigation and punishment of human rights violators is necessary for restoring the moral order of the society (Bercovitch and Jackson 2009: 153). According to Brouneus (2003: 32) tribunals play a salient role in justice, accountability and

reconciliation; the punishment of certain crimes is considered in both theory and practice to be important for reconciliation and there is a legal and moral perception that the most severe crimes such as instigating genocide must be punished. Apparently, this is the reason reconciliation and justice are now a key part of the international diplomacy of intervention, most often seen in truth commissions and human rights trials. But is retributive justice the right and adequate mechanism to deal with the transition from violence to peaceful politics after civil war situations, where gross human rights violations and mass atrocities have taken place between and within communities?

Haden (2004) cited in (Wachira et al. 2014: 185) argues that ideally, a transitional justice regime requires that human rights violations be subjected to the application of human rights law; and so, criminal prosecution is consistent with international human rights law, notably the obligation to punish crime. The argument is that criminal justice is believed to have intrinsic worth and is regarded as a basic ingredient of a stable democracy, as it helps identify the perpetrators, emphasize accountability; deter the commission of future atrocities, and satisfy the need of victims for the full restoration of dignity (Wachira et al. 2014: 186). But to what extent is punishment having a deterrent effect, whether specific, as when aimed at the offender, or general as when directed towards the public? Apart from this scepticism, there are other counter-arguments which point out that prosecutions have been found to be impractical and inadequate in the context of post-conflict transitions: among other reasons, they are lengthy and costly; also, it is impossible to prosecute all offenders. As most institutions in post-conflict societies, including the judiciary, are dysfunctional, weak and inept, it detracts from the reconciliation agenda, and could create conditions for revenge and a new cycle of violence, and the focus is on the offender and not the victim (Hayner 2002; Wachira et al. 2014: 186-7).

Again, holding human rights violators accountable does not seem to contribute towards reconciliation and peaceful transition to democracy. Beitzel and Castle (2013) for example, question the degree of certainty that can be placed in the belief that punishing the guilty will bring some comfort to the surviving victims and deter

future war criminals. Similarly, Zehr (2002) asks how the retributive model actually can serve to promote reconciliation and reintegration in the complicated context of New Wars, since the current models express enthusiasm for incarceration and incapacitation. It seems the international community, as third party from this perspective, has a limited role to play if reconciliation between divided communities is to be achieved through trials. The role of the international community may be important in terms of possibly ending violence through arrests of key individuals in command; however, their role in bringing justice to situations where non-state actors (popular agency) are involved in the gross violations of human rights, as in the case of the Rwanda genocide or intra-state war, is perhaps overstated.

2.9.2 Truth Commissions (non-judicial bodies)

“Truth commission” (TC) is a generic term that has been given to official bodies set up to investigate and report on a pattern of past human rights abuses (Hayner 2002: 5). There are diverse types of TC which are sometimes called by a variety of names determined by the given mandate. According to Bercovitch and Jackson (2009: 155) the term is used generically to describe a wide range of official and semi-official bodies set up to investigate a history of human rights violations in a country during a specific period. This means every TC is unique and context-specific. Similarly, Wachira et al. (2014) define TCs as bodies established to investigate and report on human rights abuses over a certain period in a specific country or in relation to a specific conflict.

TCs are temporary non-judicial bodies that enjoy a measure of de jure independence; are usually created at the point of political transition, either from war to peace or from authoritarian rule to democracy; are officially sanctioned by the state, and in some cases, by the armed opposition as well, in a peace accord; are usually in operation from one to two years; complete their work with a submission of a final report that contains recommendations; and focuses on violations of human rights and sometimes of humanitarian norms as well (Freeman and Hayner 2003). According to Hayner (2002: 14), TCs have the following four characteristics: they focus on the past; investigate the pattern of abuses over a period, not a specific

event; are generally a temporary body that completes its work with an official report; and are officially sanctioned to assure the accessibility of information, and that the recommendations of the concluding report are taken seriously.

It has apparently become common for peace agreements following civil wars to include the establishment of a TC as one of the transitional justice mechanisms to investigate the truth about violations of human rights during the conflicts. In the last two decades, several TCs have been established that were embodied in peace agreements which settled civil wars across the globe. Huyse (2008) recounts that in Africa, a few of the most recognized ones have been South Africa (1995), Sierra Leone (2004) and Liberia (2005). This is because the nature of most contemporary armed conflicts, which concern governance and often involve the pursuit of autonomy of self-government for certain regions or groups, could be associated with repression by regimes and polarized communities targeting each other with impunity. In South Sudan both the SPLM/A war (1983-2005) and the war which erupted in 2013 have pitted the government against some communities, but also set communities against each other, such as the Dinka and the Nuer, Murle and Nuer, Shilluk and Dinka, among others.

But how does a TC achieve its goal in situations of peace achieved through settlement, where a former regime forms a large section of the government of the day, and rebels constitute a big part of the national army? Who can guarantee that the TC's reports are taken seriously? In South Africa, for example, former president F.W. de Klerk successfully instituted legal proceedings to obstruct the Commission, at least temporarily, from naming him in the report. Similarly, the African National Congress (ANC), unhappy with the Commission's conclusions about its past actions, attempted to block publication of the entire report; and Thabo Mbeki speaking in his capacity as the president of the party said the ANC has serious reservations about the TC's process and report, and as communicated by Priscilla Hayner, that in particular they found that "the net effect of the commission's findings is to delegitimize or criminalize a significant part of the struggle of our people for liberation" (Hayner 2002: 44-5).

The ultimate goals which are sought through each TCs or TRC's internal organizational structures, processes, and procedures, are to end and account for past violations, promote cathartic healing of victims and perpetrators, enhance national reconciliation, strengthen a new and democratic political order, and legitimate new policies (Wachira et al. 2014: 4). What is still open to question is how the practice of making past atrocities public knowledge as intended, would ensure that they did not occur again, and equally it is unclear if and how knowledge can be translated into deterrence. Reconciliation requires more initiative, time and deliberate actions than those immediately availed of by a transient mechanism such as the TRC (Wachira et al. 2014: 83) As outlined above, most TRCs have a life span of only one or two years, a short time to complete a reconciliation process in the aftermath of sustained violations and bitterness.

Furthermore, TRC's mandates are generally broad and far-reaching, and include the revelation of truth, the making of recommendations for reparations and institutional reforms, amnesty, and the promotion of reconciliation (Wachira et al. 2014: 7). In some examples such as in Africa, before these TRC's mandates are accomplished, another instance of unrest or armed conflict would often have started, derailing the entire process. It can therefore, be argued that TRCs, while they may have been successful in some post-conflict societies, seem not to have achieved their intended goals in most post war countries. In Liberia, although the TRC successfully concluded its mandates and presented recommendations which included; prosecutions and political censure of, and amnesty for, some of those most responsible for human rights violations during the fourteen-year Liberian war, mostly ex-warlords and political actors, these actors' negative and sometimes ambiguous reactions to the recommendations undermined the work of the TRC; especially when those barred from public offices continued to run in the elections (Lappin and Harris 2010: 185). Lappin and Harris also argue that, besides the lukewarm reactions of the international community to the TRC's recommendations, especially regarding the Liberian President's human rights records, the TRC itself, discredited its work due to a flawed process and internal divisions among its members that resulted in some of them not signing the final report (Lappin and Harris 2010: 186).

The goal of a TC is to promote reconciliation on a national level through speaking openly of a silent and conflictive past to avoid latent conflicts and bitterness between opposing parties (Freeman and Hayner 2003). But how can TCs promote reconciliation? As explained by Freeman and Hayner (2002: 126), they can encourage tolerance and understanding by allowing the conflicting parties to observe each other's grievances and sufferings. This may help build empathy, thereby deterring acts of vengeance and countering the rivalry and hatreds arising from past events. Commissions can also provide a safe and impartial forum for direct restorative justice processes in which the victim, the offender, and/or other individuals or community members can actively participate in the mediation and resolution of past grievances of a less serious nature. Furthermore, Commissions can recommend practical and fair measures for the necessary reintegration of certain categories of offenders back into society. Potential rewards for instituting TCs therefore, include: to allow reconciliation, to outline the needed reforms, to allow victims a cathartic airing of their pains, to represent an important, official acknowledgment of a long-silenced past, and that this process will help keep such horrors from being repeated (Hayner 1996: 19). During a difficult political transition, a TC can also be used by new leaders to demonstrate or underscore a break with a past record of human rights abuses to obtain or sustain political legitimacy (Hayner 1996: 19).

Some of the lessons learned from the experiences of documented TCs around the world demonstrate that the expectations of TCs are almost always greater than what they can achieve: most particularly, rapid reconciliation, a significant reparation to all victims, as well as a full resolution of many individual cases, and institutional reforms. Few of these expectations can be fulfilled by most TCs. Some levels of disappointment is not uncommon as a TC comes to an end, or as a government accepts but then does not move to implement the recommendations of a TC's report (Hayner 2002: 8).

2.9.3 Restorative justice

Restorative justice is a procedure in which the goals of peace and justice are complementary and advanced together, as is the case with local justice mechanisms (Beitzel and Castle 2013: 47). The focus of local approaches is restorative justice, where the victim's need for restoration and the perpetrator's need for reintegration are both considered and addressed, to reconcile them and their communities, as opposed to retributive justice which prioritizes punishment of the offender over reconciliation. Restorative justice seeks to connect the past, the present and the future while responding comprehensively to justice needs and requirements with respect to all parties impacted by crime: victims, communities and wrongdoers (Zehr 2002: 20). The focus of this approach is not only on the victims or perpetrators, but also on the community and the relationships required for future co-existence. As discussed above, this is in line with the principle of *Ubuntu* which promotes harmony as a core value of human interconnectedness.

If the concept of justice is as described above, the question to be addressed is, to what extent can justice be delivered and reconciliation achieved by an external actor such as the ICC? By involving the local community to attend to the needs of victims and the responsibilities of the offender and the community, restorative justice is better able to respond comprehensively to the justice requirements, as it is compatible with peacebuilding in war-torn societies, and dissolves the dichotomy often presumed between justice and peace (Beitzel and Castle 2013: 42). In this regard, it can be argued that the restorative justice approach represents a more adequate theory of justice, and has considerably more support from the local populations than the retributive approaches currently informing international attempts at dealing with tensions between justice and peace for violence-torn societies. Zehr (2002: 3) outlines the difference in orientation between retributive justice and restorative justice because many feel that the process of retribution deepens wounds and conflicts rather than contributing to healing and peace.

Restorative justice would offer two more conceptual distinctions for doing the work of justice than retributive approaches, as it would change the focus of addressing

crime to include victim's need, and would look to the future, to create the kind of society desired (Beitzel and Castle 2013: 46). As noted in the discussion of *Ubuntu*, despite these qualities, local approaches as restorative justice are marred by weaknesses, such as gender insensitivity and certain practices that contradict human rights principles. Zehr (2002: 60) maintains that we should not lose those qualities which the legal system at its best represents: the rule of law, due process, a deep regard for human rights, and the orderly development of law. It can then be argued in this regard that as a problem-solving technique, restorative justice is better suited than other approaches to justice in dealing with reconciliation among victims and perpetrators in civil war situations. However, it seems a better method would be to strike a balance where both justice approaches would serve their different goals in a complementary manner, hybridity.

2.10 Reconciliation

The concept of reconciliation has numerous meanings and sometimes several of them are used in the same context. Wachira et al. (2014: 79) observe that although the concept is widely used, there is little consensus about the meaning and application, and sometimes the different usages of the term are confusing. For many countries around the world the word reconciliation means different things. In Latin America for example, the term reconciliation may be tantamount to amnesia, forgive and forget. But for people in Asia and in Africa, reconciliation is key to peaceful coexistence. This implies that reconciliation is not only an elusive, but also contested concept. This may be due to the wide variation in the contexts in which reconciliation takes place. For example, Hamber and Kelly (2004: 3-5), developed a working definition of reconciliation for Northern Ireland by summarizing several meanings and five interwoven and related strands of reconciliation. According to them, reconciliation involves developing a shared vision of an inter-dependent and fair society; acknowledging and dealing with the past; building positive relationships; and attending to significant cultural and attitudinal change as well as substantial social, economic and political change.

Similarly, Hambar and Van de Merwe (1998,) cited in (2014: 81), have identified at least five different ways in which the term reconciliation was used in South Africa: as the dissolving or blurring of racial identities in order to forge a new society; as the promotion of inter-communal understanding and coexistence; as the rediscovery of a new conscience at individual level through moral reflection, confession, and repentance; as a human rights approach that emphasizes regulating behaviour through law; and as trust building through restoring personal bonds and interpersonal relationships. Two points are common to both definitions: the need to re-establish broken relationships and the need to create a shared future. This implies that in the aftermath of internal conflicts, where people had abiding relationships but which were shattered by violent hostilities, reconciliation is capable of being a key peacebuilding process and conflict resolution method.

Brouneus (2003: 20) observes that reconciliation after internal armed conflict is a social process that involves mutual acknowledgement of past suffering between former enemies and the changing of destructive attitudes and behaviour into constructive relationships towards sustainable peace. Transforming relationships by addressing the bitterness and anger that have characterized conflict situations is key to peaceful coexistence, and is an integral constituent of the *Ubuntu* principle. This is significant because unlike situations of traditional inter-state war, where a group of people in conflict are separated by borders and distance and may choose to simply avoid contact with each other, in intra-state wars people have to continue living together in close physical and emotional proximity; bound by an array of intimate and complex relationships; various kinds of political and economic interdependencies, social ties and, historical and cultural commonalities (Lederach 1997: 30). This requires confronting the past, especially when it involves serious abuses that can form the basis of renewed hostility (Bercovitch and Jackson 2009: 152).

Lederach (1997: 30) defines reconciliation as being “a focus and a locus”; where the focus of reconciliation is upon building new and better relationships between former enemies; and as a locus, “reconciliation represents a place or location of encounter,

where parties to a conflict meet". In this place he argues, the traumas of the past and the hopes for the future must be formulated and brought together by discussing the issues of truth, forgiveness, justice and peace. Truth is the longing for acknowledgement of wrong and the validation of painful loss and experience, but it is coupled with mercy, which articulates the need for acceptance, letting go, and a new beginning; and justice represents the search for individual and group rights, for social restructuring, and for restitution, but is linked with peace, which underscores the need for interdependence, wellbeing, and security (Lederach 1997: 29).

While reconciliation is a process that aims to build relationships, and forge a new future in post-conflict societies, the pragmatic view of reconciliation as anchored in the negative intent of avoiding the presumed undesirable political consequences of pursuing justice and accountability is apparently becoming a widespread practice. According to Wachira et al. (2014: 79), this seems to be the most prevalent interpretation of reconciliation in lay and political discourses; and in this sense the term seems to refer to political accommodation as opposed to retributive justice, where differences are set aside and actions that may provoke counter-reactions by powerful forces or alienate some in society are avoided in favour of more non-confrontational policies. The concern here is for the general preservation of harmony and coexistence while issues of accountability, to the extent that they are deemed to be divisive, are avoided or kept to a minimum.

But how can this kind of reconciliation address the grievances of the victims and communities and build broken relationships? The answer to this question requires more investigation. However, from the conflict-resolution and peacebuilding perspectives, reconciliation is viewed as a process of recasting or restructuring conflictual relationships to more peaceful, just, and equitable ones (Assefa, 1996; Krieger, 1998; Auerbach, 2009) cited in (Wachira et al. 2014: 80). As discussed above, reconciliation is determined by the context of the society in which the term is applied. This study however, will be more guided by the definition provided by Lederach (1997) where the focus of reconciliation is on engagement with the issues of justice, truth, peace and forgiveness that tends to resonate with the restorative

justice and indigenous peacemaking approaches based on the African philosophy of peace.

A common question often asked is: does truth lead to reconciliation? Or, put differently, is it necessary to know the truth to advance reconciliation? While the answer may be 'yes' for some and 'no' for others, reconciliation as a concept may be more affected by other factors quite apart from knowing or acknowledging the truth about past wrongs. Hayner (2002: 6), for example, suggests that true reconciliation might depend on a clear end to the threat of further violence; a reparation for those injured; attention to structural inequalities and basic material needs of victimized communities; the existence of natural linkages in society that bring formerly opposing parties together; or, most simply, the simple passage of time.

2.11 Conclusion

This chapter has theorized and critically analysed key concepts that constitute the framework for this study, which specifically explores the potential of indigenous approaches to the resolution of contemporary armed conflicts in South Sudan and their application to post-conflict justice and reconciliation. It has also conceptualized and engaged with literature on contemporary armed engagements, conflict resolution, peacebuilding, indigenous approaches, hybrid peace, justice and reconciliation as methods of conflict resolution. As a literature review, the chapter provides the basis and foundation for a deeper analysis and understanding of indigenous mechanisms and related themes within subsequent chapters of this study. The next chapter will focus on conflicts in South Sudan from a historical perspective, together with peace agreements and international efforts at peacemaking.

Chapter Three

A History of Conflicts, Peace Agreements and International Efforts at Peacemaking

3.0 Introduction

Until its independence in 2011 following a referendum on secession, South Sudan was a part of Sudan. To better understand the current conflict in South Sudan, it is necessary to consider the broader historical perspective of the Sudan's North-South conflict which ended with the signing of the CPA in 2005 and ushered in a new state. An analysis starting from South Sudan's post-independence period may ignore the momentous underlying factors that are at the heart of the conflict. By analysing the Sudan and South Sudan's hostilities and the peace agreements which attempted to settle them; this chapter also presents a case regarding the role of local initiatives in contemporary peace processes and subsequent post-conflict peacebuilding interventions. Considering the persistence of clashes in South Sudan, despite international efforts to intervene, it argues that it might prove appropriate in such contexts to complement these endeavours with local strategies founded on the histories and cultures of conflict-affected communities.

The chapter examines the North-South conflict in the light of colonial policies and activities as well as the governance system and ideology adopted by the post-independence northern regimes which perpetuated the strife with two successive civil wars; (1955-1972) and (1983-2005). It will critically analyse the contemporary peace processes sponsored by the international community that led to the signing of the 2005 CPA between the rebels, SPLM/A and the ruling NCP. It will further discuss the post-CPA and post-independence causes of the conflict in South Sudan and the peace process that led to the 2015 ARCSS, signed between the government of the Republic of South Sudan (GRSS) and the SPLM/A-IO; and it will provide a conclusion.

3.1 The Sudan's North-South conflict

The Sudan and South Sudan have known more war than peace since their respective independence, and this can best be understood and explained in terms of their pre-colonial, colonial and post-colonial realities. The pre-colonial political organization of the Sudanese community, like other African societies, was generally based on independent kingdoms and sultanates, controlling varying amounts of territory and engaged in trade, cultural interchange and military conflict (Masabo 2013: 139); which means that Sudan was composed of different nations; but as from 1821 to 1956, it was under different external political control. As a political entity, Sudan is a recent creation (Kabbede 1997: 16). Modern Sudan, therefore, had its origins in an amalgamation of existing pre-colonial states: Nubia, Kush, Funj, Fur and Southern chiefdoms, including the Zande empire, Anuak and Shilluk Kingdoms and the Ottoman Empire, 1821-1885; and the Anglo Egyptian Condominium's colonial state, from 1898-1956 (Lesch 1998: 25). For nearly two centuries, the people of Southern Sudan, as part of Sudan, suffered under different colonial rules.

Guided by the different colonial policies and ideological orientations, these historical stages of state formation in Sudan contributed to the intricate sources of uneasy relations between the Southern and Northern regions of Sudan after independence in 1956. These relations were marked by decades of conflict which started months before the withdrawal of the British imperial power (Johnson 2011: 21). Shaped by the patterns of the colonial administration and its 'Southern policy' (explained below) and the governance systems adopted by the post-colonial leaders in Sudan, these relations remained the source of conflict for more than the second half of the twentieth century (Young 2012: 19). Depending on the analytical dimensions and the tools employed, the multiple causes of the conflict which are intricately inter-related, have been broadly identified: it is commonly argued that the origin of the conflict lay largely with the skewed colonial policy that concentrated political, economic and administrative development in the North; in cultural and religious issues and competition for political dominance, later perpetuated by oil resources (Masabo

2013: 143). The genesis of the North-South conflict is therefore, generally, attributed to the colonial past (Kabbede 1997: 16).

Colonial activities ranged from the slave trade, particularly brutal during Turko-Egyptian colonial rule; the exploitation of resources such as ivory and elephant tusks and the slave trade mainly during the Mahdist rule; and the unequal treatment, marginalization of certain groups and concentration of socio-economic development in selected areas to the neglect of others mainly under Anglo-Egyptian rule (Kabbede 1997: 16). A brief analysis of the British colonial policy concerning South Sudan is of special significance in this section.

3.2 The British Southern Policy

The organization and treatment of the Sudanese, resulting from the different and foreign control of the Sudan, was based on racial and religious criteria. For example, capitalizing on the socio-cultural and racial differences, the British instituted the Southern policy (1922-1947) which intensified the North-South divide and later led to the outbreak of the first civil war following the military mutiny in 1955 which marked the beginning of Southern secessionist struggles (Masabo 2013: 139). The North-South geographical division was instituted in 1922 when the British adopted a separate system of administration for the Southern region, consisting of the provinces of Equatoria, Bahr el Ghazal and Upper Nile (Collins 2008). Administratively the three provinces were segregated until 1947, and were largely ignored in terms of social and economic development (Kabbede 1997: 17). The few social services such as schools and clinics that were available were provided by Christian Missionaries for the most part. There was also the idea that the British generally did not want to spend any money on empire, so, they relied on missionaries and a handful of administrators in the South to minimize costs, and worked extensively through indirect rule, i.e. 'customary authorities' in both Southern and Northern regions.

The 'Southern Policy' stated that "the administration of the South was to be developed along 'African', rather than 'Arab' lines, and that the future of the Southern

Sudan might ultimately lie with the countries of East Africa, rather than with the Middle East” (Johnson 2011: 11). As early as the 7th century, the Northern part of Sudan had evolved along Islamic/Arabized lines with its cultural orientation towards Egypt and the Arab World; while the Southern part of Sudan evolved along African lines, with its cultural orientation towards Africa (Nantulya 2004: 1). While the idea of ‘Arab’ and ‘African’ identities are also constructs, it seemed that the British Southern policy (differently interpreted) followed on this early development. These two competing identities became a crucial issue at the heart of the conflict in Sudan.

Two different patterns of administration for the North and the South were already in practice prior to the enunciation of the policy (Johnson 2011: 11): Administrative patterns neglected Southern regions and eventually left the South and other peripheral parts¹⁷ of the Sudan vulnerable at independence to their northern counterpart, mainly the tribes of central Sudan. These tribes, in particular the Jaliyyin, Shaggiya, and Danagla, received most benefits from British colonialism, the best opportunities for education, and held the key positions in the colonial state (Young 2012: 3). The British aimed to build a firm alliance with tribal notables and leading merchants and religious families in the North to counter the influence of its Egyptian partner in the joint rule of Sudan; and up until 1947, Britain had not been fully committed to administering the South as part of Sudan, entertaining the notion that it might eventually be linked to the East African colonies as per the ‘Southern Policy’ (Johnson 2011: 25).

The South was virtually administered as a separate state after the British introduced the ‘Closed Districts’ Ordinance’,¹⁸ another colonial policy which precluded northern

¹⁷ Although discussions in the following sections centred on South-North war, a reference is made here on core-periphery understanding of Sudan’s power structures, development and civil wars.

¹⁸ Closed District Ordinances were used throughout the British Empire to restrict access to specific districts for a variety of reasons, usually economic. They were applied to anyone who was not a member of the district being closed, who then had to apply for a permit to enter. Parts of Darfur and Nuba Mountains were closed

merchants and others from going to the South and prepared the South to join the British colonies in East Africa (Young 2012: 3). The 'Closed District Ordinance' was a way to build a bulwark against the slave trade, the spread of Islam and the Arabic language, and the British administration encouraged Christian missionaries¹⁹ to convert the Southern Sudanese from their traditional religions to Christianity, teach them English, discourage the use of Arabic, and even prohibiting the use of Arab clothing (Collins 2008: 35). Permits were required for travel between the South and the North and other closed Districts.

The policy may have initially been in favour of the South, but it was a recipe for conflict when the South was expected to join the North rather than East Africa. These regions had been separate and were administered by distinct policies. Moreover, the turning over of state power to the Northern elite, created serious resentment in the South where the handover of power was viewed as exchanging one colonial authority for another (Young 2012: 3). The failure of the colonial authorities to allow the people of the Closed Districts to exercise their rights to self-determination when

districts, and later White Nile district, initially as part of the belated efforts to combat the residual slave trade. But the list of closed districts changed over time (conversation with Douglas Johnson, 13/2/2018)

¹⁹ Historical accounts on the role of missionaries was not homogeneous. Relationships between colonial government and missionaries were not always cordial. British administrators often had an ambivalent attitude towards missionaries and the education they provided. Missions were regulated by the sphere system, which was put in place to prevent sectarian disputes being imported to the Southern provinces. During the 1920s and 1930s the ideals of Native Administration as practised in most parts of the South meant that administrators were happy for South Sudanese to be educated in their vernacular languages, but they wanted to return school children to their home areas as "better villagers". In Upper Nile especially, some British administrators were very much against missionaries introducing clothing, or introducing ideas that would upset native custom. There was also the national question since not all missionaries were British: Austria was enemy aliens since World War I. Italians in World War II, Americans and Australians were being disapproved of as being "colonials" (conversation with Douglas Johnson, 13/2/2018).

the British abruptly reversed their policy in 1947 was one of the main factors that contributed to the first civil war in Sudan: a rebellion which started with a mutiny in Torit in 1955, four months before Sudan's independence on 1st January 1956 and raged for 17 years (1955-1972). The rebellion called for full independence of South Sudan and was led by Joseph Lagu of the Southern Sudan Liberation Movement (SSLM) with its military wing the 'Anyanya' guerilla army. Somewhat akin to colonial policies, the post-independence administrative system and ideology were factors that perpetuated the North-South's decades of conflict.

3.3 Post-colonial Administration, Ideology and cultural perception

Sudan's post-independence governance established an unequal relationship between the centralizing power of the state and its peripheries (Johnson 2011). This marginalized regions such as Southern Sudan, Darfur, South Kordofan, the Blue Nile and Eastern Sudan (Waihenya 2006: 48-9). The state machinery was controlled by a few northern elites who dominated the government, as they were the ones who were privileged with better education during the colonial period. These elites advocated a brand of Sudanese nationalism shaped in their own image; and initiated policies of national culture that promoted homogenization around this image, which served to undermine the culture, identity and customs of the Sudanese people who did not fit this model. Drawing on this idea, Collins (2008: 137) argues that in the history of independent Sudan there has always been a persistent and pervasive assumption that Sudan was an Arab nation whose citizens would eventually adopt Arab culture, language and religion. This was a deep-seated conviction in northern Sudan which, given the diversity of the country, was unfortunately divorced from reality as manifested in the subsequent rebellions.

Islamization and Arabization agenda was common to all successive post-colonial regimes as each introduced its own brand of political Islam and attempted to legitimize its control through fostering an Islamic-Arab identity for the country (Young 2012: 4). This was vehemently opposed by the Southerners who saw it as another form of slavery (Masabo 2013: 144). Sudan has a duality of identities as it is both African and Arab and practices more than one religion. Although the country is

predominantly Islamic in terms of religion, mainly in the North, it inhibits a considerable number of citizens from practising religions other than Islam; the people from Southern Sudan, for example, practised Christianity and African traditional religions; as did some people in Southern Kordofan and the Southern Blue Nile. Despite this diversity, the successive post-independence Northern regimes remained intolerant. The central government, especially during the Abboud military regime (1958-1964), adopted and put in practice policies that undermined the identity, cultures and customs of the South. It imposed Islam and Arabic through coercive policies such as; the requirement and encouragement to chiefs and officials to convert and take Muslim names, use Arabic as official language when discharging their duties among others, and declared Friday as the weekly day of religious observance and rest. It also closed Mission schools and restricted Christian missionaries and later in 1964, expelled them from the country (Kabbede 1997: 4). Sharia law was imposed in 1983 by Jaafar Mohamed Numeiri's regime and the Arabic language was elevated as a national language and a language of instruction (Masabo 2013: 145).

The successive regimes followed the same policies pursued by their predecessors; and consistent attempts to pursue nation-building based on Arab and Islamic identity were a common agenda. Sadiq el Mahdi, for example, who became Prime Minister in 1966 and again in 1986, reiterated Sudan's future by declaring that "Islam has a holy mission in Africa and Southern Sudan is the beginning of that mission" (Malwal 2005: 41). Arabization and Islamization policies would continue to play key roles in the conflict throughout the post-independence administration.

3.4 The 1972 Addis Ababa Peace Agreement

The Addis Ababa Peace Agreement (AAA) signed in 1972 in Ethiopia between the GOS and the SSLM settled Sudan's first conflict. The agreement which was mediated by the World Council of Churches, assisted by the All African Council of Churches and the Sudan Council of Churches (SCC), with support from the Ethiopian Emperor Haile Selassie, granted a large measure of autonomy to the South, allowing the region to have its own elected assembly and executive body that

would be responsible for its internal affairs. It confirmed the Southern boundaries to remain at independence in January 1956. It recognized the Southern religious beliefs, languages and traditional laws and asserted the equality between Islam, Christianity and local traditional beliefs as religions of the people of South Sudan (Bashir 1984: 27). It also accepted the reintegration of the Anyanya guerrilla fighters into the national defence forces, to resettle and rehabilitate the people dislocated by the war and to create better conditions for development opportunities (Deng 1987). The agreement did not include any indigenous mechanisms.

Although the most important event in the political history of the post-independence Sudan and one which underscored the fact that national unity is possible in diversity (Kabbede 1997: 6), the agreement lasted for only a decade as President Jaafar Mohamed Nimeri was unfaithful to its terms. As will be discussed in the following section of this chapter, this was to become a trend that leaders brokered agreements but did not implement them. Southerners continued to be marginalized from the central decision-making processes and the regime failed to pay significant attention to the socio-economic development needs of the region (Zerai 2010).

The political and economic challenges faced by the regime at that time are crucial to an understanding of Nimeri's behaviour regarding the agreement. Faced with political and economic crises in the late 1970s, Nimeri pursued political accommodation and reconciliation with his political opponents in the north with whom he had earlier fallen out, including the Muslim Brotherhood who never favoured the South's self-rule. These northern political forces believed that the agreement gave too much to Southerners and would foster separatism (Leach 2013: 107). Their alliance with Nimeri was a major reason behind the abrogation of the agreement. But this followed a series of events in violation of the agreement's terms by Nimeri: namely, the extraction of oil after its discovery in 1979 and an attempt to redraw North-South borderlines around this new oil area; the construction of the Jonglei Canal to enhance the smooth flow of water through the Sudd to increase the supply for agriculture in Northern Sudan and Egypt at the expense of local residents in Jonglei; the use of land to extend mechanized agriculture and exploit mineral

resources in the South; and finally the Southern autonomous region's re-division in 1983, into three separate regions (Kabbede 1997: 10).

The patronage and authoritarian systems practiced by Nimeri that allowed for his direct interference in Southern affairs, reinforced by ethnic and regional divisions among Southern political elites, facilitated the re-division (Leach 2013: 110). Most Southern Sudanese were opposed to the re-division and considered it not only a violation of the 1973 permanent constitution that granted self-rule to the South, but a weakening of the South's unity (Johnson 2011: 55). The re-division of the Southern region contributed to serious political differences and regional tensions among the South Sudanese who were yet to build cohesion around a single identity; the bitterness would significantly increase during the SPLM/A and after the signing of the CPA in 2005. The South Sudanese resentment was further exacerbated by the imposition of Sharia, also known as the 'September Law', nationwide in 1983; but this came when the SPLM/A had already started in June of the same year with a mutiny in Bor (Lesch 1998: 47).

The SPLM published a manifesto after the Bor mutiny in 1983, and despite the manifesto's focus on the grievances of the South, the non-separatist vision advocated by its leader John Garang was to establish a democratic 'New Sudan' where there would be justice for all, equal treatment and development and respect for diversity (Collins 2008: 142). Supporters of this idea were drawn from most of the marginalized communities in the Sudan, particularly from Southern Kordofan, Blue Nile, Abyei and later Eastern Sudan²⁰, who had hoped for a wide democratic change in the country (Johnson 2011: 64). The SPLM/A's commitment to a united Sudan meant that it could form a common political front with the exiled northern

²⁰ The people of Southern Kordofan and Southern Blue Nile who equally felt marginalized, joined the SPLM/A, and fought alongside Southern Sudanese because they had hoped for a democratic change; but were to be disappointed by the CPA and its provisions which exclusively defined Sudan's conflict in North-South terms.

Sudanese opposition parties (Johnson 2016a: 143), hence, the creation of the National Democratic Alliance (NDA) in 1995, a coalition of internal and exiled opposition parties in the North and the South. It was made up of the SPLM/A, Democratic Unionist Party (DUP), Umma Party (UP) and other smaller northern parties. As an anti-government umbrella group, it opened the Northern-Eastern Sudanese front to the civil war and made it a centre-periphery rather than simply a North-South conflict (OCHA 2006: 4).

But in 1991 SPLM/A suffered a split²¹ that pitted the Torit faction of John Garang against the Nasir faction of Riek Machar and Lam Akol which announced its goal to be the total independence of the South (Johnson 2016a: 44). However, despite their call for independence of the South, like the Anyanya 2, the Nasir faction continued to get its support from Khartoum, a situation which Khartoum tolerated to weaken the liberation Movement. As will be discussed later in this chapter, the split was to have a negative impact on the Movement and relationships amongst South Sudanese communities.

3.5 The 2005 Comprehensive Peace Agreement (CPA)

The 2005 Sudan CPA ended the 21 years of North-South civil war. Peace initiatives to resolve the conflict were undertaken by various individuals, organizations and governments (Malwal 2005: 25). Peace talks in the early years of the war were conducted in Nairobi and Addis Ababa in 1989. The Nigerian government facilitated two rounds of peace negotiations, referred to as Abuja 1 and Abuja 2 in 1992 and

²¹ In August 1991, Riek Machar and Lam Akol, SPLA Commanders in Nasir announced the overthrow of John Garang, SPLA/M leader. They denounced Garang as a dictator, called for greater democracy in the SPLM/SPLA command structures, and pledged themselves to a greater respect for human rights especially in the regards to the release of political prisoners, and a halt to the recruitment of child soldiers. They also announced that the SPLM/SPLA's new objective was to obtain the independence of the Southern Sudan. The main targets and casualties of the fights between the factions in Bor and Kongor districts were civilians (Johnson, 2011: 97).

1993 respectively (Rolandsen and Daly 2016: 131). The most promising internal attempt at achieving peace was the DUP-SPLM/A agreement in 1989 which was aborted in the same year, when the National Islamic Front (NIF), which became the Sudan's ruling party, overthrew the Sadiq al-Mahdi government (Young 2012: 81). The delay in reaching a peace deal made analysts question whether the parties in conflict were negotiating in good faith. Young (2012: 79), for example, attributes the failure to reach a peace deal to Khartoum's regime which was reluctant to accept a political process and was committed to making the war against the SPLM/A into a jihad.²²

The "New Sudan" agenda of the SPLM/A, on the other hand, was unlikely to be attained except by war (Malwal 2005: 16). This became an incentive to pursue a war, particularly because as noted above, the slogan had attracted a huge following from different marginalized areas of Sudan, as the war has been called by the name of "national liberation". The divide-and-rule, and proxy militia, aspects of the war after the 1991 split; and how all sides and militias were often profiting from the conflict for example, through controlling border points, oil areas, aid routes and so forth, was also a factor that prolonged the civil war. This resonates with Boege's observation on how large-scale violent conflicts like in the case of Sudan's war attract a host of actors, issues and motives, where in the context of globalized markets, war economies emerged; and actors in these war economies (warlords among others), are often linked to non-state traditional social entities (Boege 2011: 433).

²² Following the NIF taking power in Khartoum on 30th June 1989 through a coup led by Brigadier General Omar Hassan Al Bashir, of the Revolutionary Command Council, a set of structural changes and processes were set in motion to serve and secure the new Islamic model. These processes included Islamization, Arabism and Mobilization of armed militia to fight a jihad, (Holy War) against any groups or regions mounting resistance. The rebellions in the South was branded as resistance to Islam that called for a jihad which attracted foreign elements from the Muslim world. Sudan was to be governed by Islamic principles and the laws of Quran according to the interpretations and regulations of the NIF led by Turabi.

After over a decade of unsuccessful peacemaking attempts by regional bodies, the IGAD, backed by a consortium of its international friends, notably the United States of America (USA), the United Kingdom (UK) and Norway, known as the 'Troika', and Italy, the AU and other peace partners, brokered the CPA (Malwal 2005: 11). Several factors contributed to the rejuvenation of the peace process that finally brought about the CPA, and key among them were the following: firstly, both sides to the conflict apparently had come to a position of a hurting stalemate. A hurting stalemate is a situation where each side in a conflict comes to the determination, following a cost and benefit analysis, that outright military victory is unlikely or impossible and so there is more to be gained from a cessation of hostilities and engagement in the negotiation process than maintaining the status quo of violent conflict (Antwi-Boateng and O' Mahony 2008: 134). The stalemate which developed in the late 1990s paved the way for the negotiations resulting in 2005's CPA (LeRiche and Arnold 2012: 89).

Secondly, developments in the international, regional and sub-regional arenas, especially the end of the Cold War, and changes in the international political climate, played a pivotal role. Communism fell and the Derg regime in Ethiopia was overthrown in 1991, which lost the SPLM/A the support it had enjoyed from the Ethiopian dictator Mengistu Haile Mariam. With heightened concerns, particularly in the USA, about international terrorism after 11 September 2001; and Sudan being identified as one of the countries on the US State Department list of state sponsors of terrorism, pressure was brought to bear on Sudan (Young 2012: 89). Osama Bin Laden and his Al Qaeda organization moved to Sudan in 1991, from where he directed some of his first terrorist attacks (OCHA 2006: 4).

The NIF regime was therefore under duress to strike a quick peace deal with the rebels or else face a regime change. The bombing of the Dar El Shifa pharmaceutical plant in Khartoum North in 1998 by the Clinton administration could have been an early warning to the NIF regime. The passing of the Sudan Peace Act in 2002 which accused Sudan of genocide for killing more than two million civilians in the South during the civil war since 1983 (OCHA 2006: 5), and the call for further sanctions if

the government of Sudan was found not to be negotiating in good faith, clearly showed how the USA put its weight and support behind the IGAD mediated peace process. Internally, the regime was also under pressure; Bashir's fallout with the more radical Hassan al-Turabi's wing of the National Congress Party (NCP), a new name which replaced the NIF, ushered in a change of policy, which made the regime more palatable internationally (Rolandsen and Daly 2016: 134).

3.6 Mediation, negotiations and role of regional and international actors

The AU as its former incarnation, the Organization for African Unity (OAU), was the first inter-governmental organization to directly engage with the Sudan conflict. Under the auspices of the OAU, peace talks were held in Abuja, Nigeria in 1992 and 1993. SPLM/A factions; the SPLM/A Nasir of Riek and the SPLM/A Torit under Garang were brought together for the first time since their split in 1991, and the talks, to a considerable extent, forced compromise regarding the achieving of self-determination among Southerners. This conceptual unity shaped southern politics during the remaining years of the war culminating in the CPA (LeRiche and Arnold 2012: 94).

Starting in 1993, IGAD began mediating between the warring parties. IGAD countries had a direct interest in working very hard to find a peaceful solution to the fighting in Sudan (Malwal 2005: 12). Their own internal security, especially Uganda, Kenya and Ethiopia, was affected through the cross-border incursions of the warring Sudanese factions; their social services were severely constrained by the influx of thousands of Sudanese refugees; and even their own domestic politics was affected by the civil war in Sudan. The first significant milestone of IGAD's efforts, achieved in September 1994, was a Declaration of Principles (DoP), postulating the right of Southern self-determination through a referendum and secular democracy within a united Sudan (LeRiche and Arnold 2012: 106). However, between 1994 and 2002 the peace process stalled, war intensified especially among Southern factions following the split.

The IGAD peace process resumed in 2002; and based on the issues to be addressed in accordance with the causes of the conflict, the mediation and negotiation process leading to the Sudan CPA was a complex process. The main issues were: national identity, political exclusion, socio-economic marginalization and the Arabization and Islamization policy's impact on the people of Southern Sudan (Waihenya 2006). The peace process was set to address these issues and achieve peace, democratic transformation and a united Sudan. IGAD, led by Kenya, took on a mediation role to provide the necessary communication and facilitation to assist the North and South Sudan to resolve their differences and to ensure peace in the region. The CPA was therefore, a result of the IGAD mediation efforts.

The role of the international community in the Sudan peace process has been remarkable. My discussion in this sub-section will cover this role before, during and after the signing of the CPA, and later in the chapter, during and after the eruption of the December 2013 conflict and peace process. Without strong American pressure, for example, the Sudan peace process would likely not have gone anywhere. For nearly nine years before 2002, the IGAD peace process had failed to make any real headway (Malwal 2005: 19). The 2002 appointment of former US Senator, John Danforth, as Presidential Envoy for Peace in the Sudan was the beginning of serious US involvement in the Sudan peace process (OCHA 2006: 5) and paved the way for a clear course for peace. While pressure from the American human rights activists and the Congressional Black Caucus attracted most attention within the Clinton administration, under Bush it was the Christian right, the oil industry and, most significantly, security and intelligence interests who pushed for action (Young 2012: 122). The concerns of human rights activists and the Black Caucus were the gross human rights violations and racial discrimination against the blacks in the Sudan. Church leaders mainly in Bush's home town of Texas pressed him to deepen the US engagement in Sudan where Christians were being persecuted. This was further influenced by Bush's personal friendship with the evangelist Billy Graham and his son Franklin, who operated their own NGO, Samaritan's Purse, in Sudan (Young 2012: 122).

American interest in the oil industry in Sudan was also a factor; where they felt the benefits of their efforts at Chevron establishing the oil industry in Sudan in the 1970s were being reaped by Asian companies and the Talisman Company in Canada. Achieving a peace agreement by the Bush administration would end the embargo imposed by Clinton's administration and provide security for them to operate in Sudan (Young 2012: 123). But the US also had security interests to pursue in the Sudan. As noted above, the hosting of the Al Qaeda organization by Sudan posed a threat to the US and to international peace and security. Urgent action was needed to disrupt this terrorist activity by ending the conflict in Sudan. Some of the credit for the signing of the CPA therefore, goes to the USA and three European countries: Britain, Norway and Italy, who cooperated in facilitating funding to the peace process (Rolandsen and Daly 2016: 134).

As far back as in 1989, before the peace process, the international community had been heavily involved in relief and humanitarian efforts to help the Sudanese victims of the war (OCHA 2006: 5). The UN Operation Lifeline Sudan (OLS) was the best testimony to the involvement of the international community to support the war victims in Sudan. American and European NGOs were engaged not only in providing relief to the people of South Sudan, but they also exposed human rights abuses and war atrocities committed against civilians by the warring Sudanese parties to the outside world and urged the world to come to the aid of the people of South Sudan (Malwal 2005: 17). Without the support of the UN, the exercise of self-determination would never have happened in accordance with the CPA, in 2005. This was acknowledged by the Speaker of South Sudanese Legislative Assembly (SSLA) at the inaugural meeting of SSLA on 8 August 2011 (Johnson 2016b: 97).

CPA implementation

The CPA had six protocols: the Machakos being the first; named after the town in Kenya where the agreed principles and the framework document, which became the CPA, were discussed and signed. The core CPA points included: a six-month pre-interim period to establish the needed institutions and implementation mechanisms, and a six-year interim period within which these several stages were to be

implemented; border demarcation, a national census after two years, democratic elections after three years, popular consultations²³ for the people of Southern Kordofan and Blue Nile, and an internationally-monitored referendum for the people of Southern Sudan and Abyei at the end of the six years (Antwi-Boateng and O' Mahony 2008: 133).

Few of the requirements laid out in the CPA were fully met. Some were dismal failures, and others were never even attempted which suggests that the stated objectives of the peace process, namely, the unity of Sudan, democratic transformation and sustainable peace, were not achieved (Young 2012: 98). The 2008 census results were contested by the South; the general elections were allegedly rigged and dissatisfaction with the results led to a series of rebellions. The big achievement for the South was the referendum on secession in which the people of Southern Sudan voted 98.3 per cent for separation (Young 2012: 221). Despite this however, the Abyei referendum to allow the people of Abyei to choose between remaining as part of the North or becoming part of the South was not implemented. Abyei was originally a territory of the South but was transferred by the colonial administration to Kordofan in 1905 for administrative purposes (Johnson 2011: 171).

In the interim period, 2010, the NCP and the SPLM agreed to a High-Level Implementation Panel of the African Union (AUHIP), led by Thabo Mbeki, the former South African President, to facilitate post-agreement arrangements though there was a feeling that IGAD had been side-lined (Rolandsen and Daly 2016: 151). The Panel continues to support the parties in dealing with the outstanding post-CPA issues that, among others, include: the situation of Abyei, the borders between the two countries and the conflict in Southern Kordofan and Blue Nile States. But since the eruption of the 2013 hostilities in South Sudan, which I will discuss in the next

²³ The CPA mandated a process of popular consultation, which permits the people of Southern Kordofan and Blue Nile to either adopt the CPA as the final settlement between the two states and Government of Sudan or renegotiate the CPA to remedy any shortcomings to reach a final settlement.

section, the Panel's focus has been more on Sudan's struggle between the government and the various rebel groups, while IGAD has mediated the South Sudan dispute between the government and SPLM/A-IO.

The failure to fully implement the CPA followed the lines of the 1972 AAA. One reason the elite brokered peace deals and did not implement them could be the non-inclusive way the agreements were negotiated. The AAA centred on Joseph Lagu and the Sudan government, and the CPA around John Garang and Osman Taha, without the participation of the civil society, other political actors and armed groups. Putting people who had the highest authority in their respective parties to raise the level of negotiations; ensuring the seriousness of both parties in the negotiations, and giving hope for the negotiations' success, were some of the arguments in favour of Garang and Ali Osman who led the process. But the assumption that they would continue to be in positions of authority to implement the agreement they reached was a major risk. Garang soon died in a helicopter crash on 30 July 2005 and Ali Osman did not lead the NCP government and was later removed from office (Young 2012: 106-7). Moreover, the two had agreed that critical issues, ranging from Abyei to border demarcation and reconciliation, would be resolved in the presidency of which both would be members; and in the event, many of the most intractable problems facing the implementation of the CPA were left to the presidency, but they remained unresolved.

3.7 Critique of the CPA Process

The CPA process, based on the liberal peace approach has been critiqued for several weaknesses. Apart from its usual quick-fix- exit strategy to conflict resolution, other interlocutors such as, civil society, faith-based actors, traditional authorities, and other armed groups from both South and North Sudan were excluded from the process. This section of Chapter Three argues that the failure to be inclusive, and to recognize, appreciate, and incorporate indigenous mechanisms and cultural resources in the peace process to address the grievances and reconcile the bitterly divided communities is largely responsible for the persistence of armed conflict in South Sudan. This is also the case with conflicts in the border areas between Sudan

and South Sudan. I now turn to discuss some of the key weaknesses and the limitations of the international efforts at peacemaking in South Sudan regarding the 2005 CPA.

3.7.1 Exclusion of Civil society, Political Parties and Other Armed Groups

The role of civil society, both international and local, is crucial in peacemaking and sustainable peacebuilding, particularly in a war where multiple non-state actors were involved, and characterized by a weakened social fabric and polarized communities. Under such circumstances, civil society, traditional authorities and women play a role in trust and relationship building leading to reconciliation. Young (2012: 109) argues that the negotiating parties' claims that some political parties and civil society elements were consulted, were unevidenced and untrue, and that negotiations were monopolized by the Sudan government and the SPLM/A. The IGAD peace process was confined to the warring parties even though the Sudanese political situation was too complicated to be resolved by the two parties on their own (Malwal 2005: 32).

The armed groups, especially the liberation movements that signed the Khartoum and Fashoda Peace Agreements, were also excluded from the peace process (LeRiche and Arnold 2012: 99). The Khartoum and Fashoda peace agreements were the accords signed by Riek Machar and Lam Akol respectively with the government in Khartoum following their split from the SPLM/A Torit faction in 1991, and their own (Riek and Lam) split within Nasir faction. The South Sudan Defence Force (SSDF), for example, a militia group collectively known in the agreement as "other armed groups", was almost the size of SPLM/A mainstream; it was formidable enough to be a peace agreement spoiler, but was still marginalized from the IGAD peace process. For several years during the struggle, this force fought the SPLM/A alongside the SAF (OCHA 2006: 5). Backed by the US, Garang was strongly opposed to the bringing of the SSDF into the peace process and it seemed they had agreed that the SSDF be banned within one year, which of course meant impending danger to peace in the South. The only reason this did not happen was that with the death of Garang and the coming to power of Salva Kiir Mayardit, an agreement to

incorporate the SSDF into the SPLA was reached on 8th January 2006, known as the Juba Declaration (Thomas 2015: 211).

The absence of a civil society, political parties and other armed groups from the negotiations meant that the mediation was narrowly focused and therefore, lacked inclusivity which in turn suggested that it ran counter to the stated objectives of the CPA: sustainable peace, democratic transformation and making the unity of Sudan attractive to all parties. Since neither the SPLM nor the NCP wanted a civil society and the traditional authorities to play a role in the peace process, and since the mediators plus the US-led quartet (the US, Norway, the UK and Italy) appeared to share these sentiments, the result of the peace process was that the root causes of the conflict and grievances remained unaddressed, resolutions were not implemented, and localized wars continued. There was a brief resumption of war in Higlig between Sudan and South Sudan, a continuation of wars in the three areas of Abyei, Southern Kordofan and South Blue Nile, and a proliferation of inter-communal conflicts in South Sudan and, finally, South Sudan's descent into civil war in 2013.

Moreover, despite the CPA's exclusive focus on the North-South conflict during the negotiations, there was no attempt to address the intra-South conflicts which were fought alongside the 22 years of civil war. A respondent said, "there were two sets of conflict in Sudan; intra South Sudan and North-South Sudan, where the former was going on concurrently with the later" (KI 30: 9/3/16)²⁴. The North-South conflict was the focus of the IGAD mediation, which completely ignored the South-South conflicts, which probably caused the most suffering to the people of Southern Sudan and which continued even after the South gained independence. Furthermore, no constructive efforts were made during the peace process or since the signing of the CPA to seriously confront the pain, trauma, bitterness, and distrust that the war had inflicted on the population. A Truth and Reconciliation Commission (TRC), widely

²⁴ Interview 30, with a Human Rights Lawyer: (9/3/2016)

supported by civil society, was written off by the negotiating parties claiming that it would undermine the peace process (Young 2012: 116).

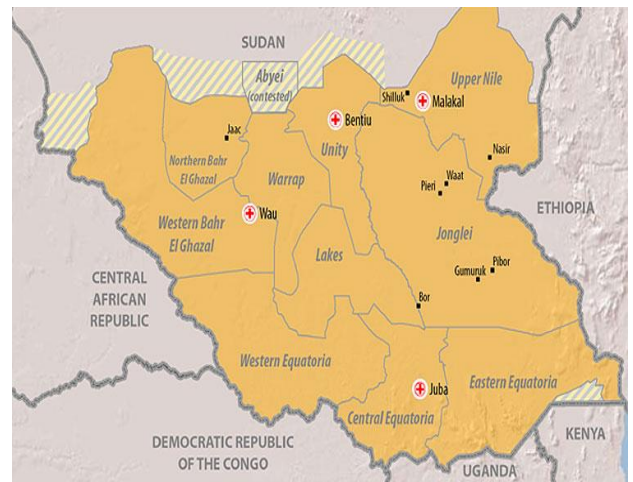
The Sudan peace process made no attempt to build trust between the parties. One reason the CPA failed to achieve its aims was a lack of trust between the SPLM and the NCP, which continued through the implementation and the post-CPA periods. Trust could have only come about through extensive meetings and debates, and not through the liberal peace model where mediators followed prescriptive and legalistic procedures, imposing strict timetables, and establishing a vast array of commissions and other bodies (Young 2012: 116). Unlike the CPA, the 1999 Wunlit people-to-people peace process (PPP), for example, between the Nuer and the Dinka built trust and repaired relationship. Wunlit peace process is dealt with in Chapter Four.

This lack of reconciliation has been of great significance, particularly for the northerners and southerners who lived in the border areas and whose lives were highly interdependent, notably the Abye people and the Misseriya nomads: their problems were exacerbated during the war but not addressed by the CPA (Young 2012: 113). Moreover, the need for north-south reconciliation, if the supposed commitment to a united Sudan was to be achieved, could only be realized by involving the Sudanese people, and the starting point for this would likely have been via civil society and traditional actors (Young 2012: 112). As the case of South Sudan illustrates, it appears that liberal peacebuilders tend to pursue their agenda of democratization, economic liberalization, respect for human rights and rule of law, promotion of civil society and good governance (Harris 2013: 155), rather than to improve the role of native mediation in civil war situations. Thus, local civil society and local strategies were excluded from the entire process.

The peace process was a top-down approach intended only to serve the interests of the peace partners (Young 2012: 79). It followed the all too familiar manifestation of liberal Western discourse hegemony in addressing and resolving conflicts in Africa, which is fashioned by the universalistic conflict resolution formula of peace negotiations with a trajectory of ceasefire agreements, transitional governments, demilitarization and constitutional reforms, democratic elections and transitional

justice based on judicial mechanisms (Daley 2006). The 2010 general elections, although endorsed by the international community, were marked by violence, harassment, intimidations by the government security in favour of the SPLM party, followed by rigging of the elections results (Young 2012: 136). As will be discussed in the next section, this was followed by local rebellions particularly in Jonglei state of losing candidates of the elections.

Figure 3: Map of Sudan (Left) and Map of South Sudan (Right)



Source: pickle92.wordpress.com & www.icrc.org

3.8 Post CPA and post-independence conflicts

Since the signing of the CPA in 2005, and the country's independence achieved on 9th July 2011, peace in South Sudan remains fragile. At independence, the government of South Sudan (GOSS) was embroiled in a multitude of crises and Sudan and South Sudan almost went to war during negotiations over the terms of secession; oil production shortly stopped and battles were fought (Rolandsen and Daly 2016: 151). There has been a recurrence of hostilities between the two countries along the border and resource-rich areas. According to Copnall (2014: 220), at the separation of the two states in 2011 there was no agreement over the precise South-North border line, as the border was in dispute, with several areas being claimed by both parties. Again, when South Sudan became independent, the

North lost 75 per cent of its oil reserves, but the South as a land-locked country remained reliant on the Northern oil infrastructure of: pipelines, refineries and the seaport to export its oil. The unresolved oil issue became a major obstacle in the relations between the two states and as such constituted a serious impediment to peace between them.

The aftermath of the elections provided for in the CPA was characterized by rebellions of the candidates who either refused to concede defeat or claimed there was vote rigging. It can be argued that the general election and its aftermath was the salient factor that created a crack in the relationship between the liberation fighters, their communities and followers that would markedly widen with the eruption of the 2013 crises. Was the hurried general election necessary at that early phase of the CPA when guns were still in the hands of people emerging from two decades of war, and in a country, that was ignorant of democratic exercises such as elections? One could say it was unnecessary. But this points to the Western liberal practice, critiqued in chapter two, of fulfilling requirements based on the universal template applied in conflict situations, of state building and post conflict reconstruction regardless of contextual realities.

Poor integration was another factor that contributed to post-CPA clashes. The repatriation of South Sudanese refugees and internally displaced persons (IDPs) was initiated between 2006 and 2008, when the government's focus was mainly on implementing the key milestones of the agreement, notably the 2008 census, the 2010 elections, and the 2011 referendum. Both governments, the SPLM and the NCP, were vying with each other to make sure that they mobilized people for their own objectives. The SPLM now wanted to ensure secession for South Sudan, and Khartoum was struggling to keep a united Sudan. The return movements were organized by the government simply at ad hoc level, without any proper analysis or re-integration plans or any idea of what services were available on the ground. The main participants in the repatriation programme were therefore, the UN and the

International Organization for Migration (IOM) (KI 27: 7/3/16)²⁵. This means that there was no proper linkage between the re-integration plan and the available development plan of the country as the two would normally be expected to merge and smoothly transmute into development.

Failing to find basic services, such as schools, health services, water and shelter among others, by 2008, many displaced people decided to return to wherever they had been during the war. Those who remained found themselves embroiled in conflicts between the host communities and the returnees where re-integration was only managed by the customary authorities (chiefs and elders). The diverse cultures, behaviours and practices adopted by those returning from their countries of exile notably: Northern Sudan and the East African countries of Uganda and Kenya, were also a source of resentment as the host communities were intolerant of these new life styles which were different to theirs. These contradictions especially among young people gave rise to unfortunate stereotypes that caused tensions and problems even within families. These included notions related to the use of language, dressing code, eating habits and the use of the toilet, among others.

During the war people lost most of their resources. When they returned, there was rampant land grabbing, and a conflict of establishing historical rights, community rights and rights to urban space. Cattle-keeping communities opted to begin raids; continuing older patterns of raiding, particularly with inflation in bride wealth costs, and this was fuelled by the proliferation of arms in the hands of the people (KI 27: 7/3/16)²⁶ Pastoralists and farmers were also in conflicts mainly in Equatoria. The livelihood of farmers depends on the crops just as that of pastoralists on their animals; so, when the latter drive their animals into farmers' fields it means confrontation, and because everybody wants to survive the farmers will obviously react and this often ends in violence (KI 31:10/2/16)²⁷. But the most crucial cause of

²⁵ Interview 27, with a South Sudanese intellectual: (7/3/2016)

²⁶ Interview 27, with a South Sudanese intellectual: (7/3/2016)

²⁷ Interview 31, with an Academic: (10/2/2016)

hostility is the proliferation of small arms which reinforces violence. Most of the pastoralists are armed and when they come into confrontation with farmers, they don't have to negotiate but use force and this degenerates into wider confrontations with the opposing communities. Most often these skirmishes at lower level escalate to national level. Such hostilities have been seen in places like Western, Eastern and Central Equatoria states where peace conferences have been held to build amicable relationships (KI: 31: 10/2/16)²⁸.

3.9 Reconciliation efforts in South Sudan

While justice and accountability for the human rights violations committed during the two decades of conflict were totally downplayed by the negotiating parties, reconciliation was only included as an ad hoc in the CPA which failed to take place (Waihenya 2006: 158). The non-inclusive nature of the peace process meant that the two parties to the conflict negotiated the peace in their own interests and terms, and avoided any issue that would implicate them. According to Young (2012: 112), both the NCP and the SPLM were reluctant to accept any form of transitional justice mechanisms. The transitional justice component was therefore not included in the agreement. However, as I will shortly discuss, there were some efforts after the independence of South Sudan in 2011 to bring about reconciliation and these included; President Salva Kiir's "big tent policy" (discussed below), the establishment of a national healing and reconciliation committee, and civilian disarmament.

3.9.1 The big tent policy

The different militia and armed groups in South Sudan as noted above, were excluded from the peace process and held grudges when the CPA was signed in January 2005. Most of these groups known in the CPA as "Other Armed Groups", particularly the SSDF, which fought the SPLA for many years during the war alongside the SAF; and in return received money and supplies of arms from

²⁸ Interview 31, with an Academic: (10/2/2016)

Khartoum (Johnson 2014: 305). With his 'big tent policy' intended to bring all South Sudanese under one big national umbrella, President Salva Kiir offered amnesty as part of reconciliation to all the armed factions. This offer was accepted on 8 January 2006 at the Juba Declaration by Paolino Matip, the leader of the SSDF (Hutchinson and Pendle 2015: 421).

The big tent policy averted armed clashes that could have been imminent between the other armed groups, especially the SSDF and the SPLA, in a bid for inclusion and recognition during the interim period. Already, in the wake of the signing of the CPA, war loomed between the SPLA and SSDF, in addition to the outbreak of a multitude of local conflicts suppressed by the war (Young 2012: 133). The amnesty also united South Sudanese for the referendum vote in January 2011. Though the intention of the policy was good, it was seemingly a repeat of the 1972 amnesty offered by President Nimeri that did not serve the reconciliation needs of the Sudanese. These SSDF forces failed to fully integrate with the mainstream SPLA, but remained loyal to their individual commanders and groups, only to realign along ethnic lines during later hostilities. Johnson (2014a: 305) attributes the parallel problem within the SPLA to an incomplete recovery from the split in the 1990s.

3.9.2 Civilian Disarmament

Two civilian disarmament campaigns were carried out in South Sudan during the CPA interim period and after the independence of South Sudan respectively. What prompted the disarmament campaigns? First, there were inter-communal skirmishes across the country throughout the interim period of the CPA, particularly in Jonglei state. According to Johnson (2014a: 305), the most serious threats to South Sudan's security prior to 2013 was ongoing fighting between mainly armed civilian groups in Jonglei state, which was partly an unresolved legacy of the war. Jonglei had been a recruiting ground for anti-SPLA militias by Khartoum, especially among the Murle of Pibor; and during the SPLA split in the 1990s, many Nuer civilian groups also armed themselves to fight the SPLA and to protect themselves against their similarly armed neighbours (Johnson 2014a: 305). Like much of South Sudan, Jonglei was awash with weapons, and civilian disarmament became a priority during the interim period.

The absence of reconciliation component in the CPA meant that community grievances remained unaddressed and scores were now being settled through a cycle of revenge attacks.

The year 2009 in particular witnessed one of the most volatile situations in the country of inter-communal fighting mainly in Jonglei state (Johnson 2016b: 102). Cattle-raiding turned into very violent attacks on villages with hundreds of children and women killed or abducted in the aftermath. The scale of direct attacks on civilian communities by armed youths became a matter of concern. The deadliest were the attacks carried out by the Lou Nuer on Murle in Pibor, and the counter-attacks in Akobo which prompted the government to disarm armed youths all over Jonglei; Lou Nuer, Murle and Dinka (Johnson 2016b: 102). It was unlike the traditional cattle raiding which was carried out using spears, bows and arrows and guided by some ethical considerations. The use of sophisticated machine guns complicated the matter. The militarization of the youth in both Murle and Nuer society during most of the SPLM/A war also impacted negatively on traditional institutions and mechanisms. With guns in their hands, the generational balance of power appeared to have shifted from traditional leaders towards the youth.

But despite the disarmament plans, which were to be simultaneously carried out amongst the three communities in two phases: first voluntarily, then; second forcefully if needs be; the campaigns generally resulted in failure and in human rights violations. The SPLA forces deployed to disarm the civilian population in Jonglei did not receive regular food supplies, and instead subsisted on the cattle belonging to the inhabitants, thus further exacerbating local problems (Young 2012: 2). Between 2009 and 2010 for example, disarmament failed because the Lou Nuer and Murle, communities managed to hide weapons, and the voluntary aspect of the process was short-lived; proliferation of weapons thereafter fuelled civilian violence, with a series of smaller raids.

The largely voluntary start of the campaign and the relatively peaceful manner with which it proceeded could be attributed to community leaders who may have convinced the youth to cooperate. Though the first campaign was met with casualties

among both the SPLA and the White Army,²⁹ the chiefs saw disarmament of the latter as critical to efforts to regain authority in their communities. The casualties were reportedly great. According to Young (2007:6), estimates of the death toll fluctuated; at least 400 SPLA soldiers died, yet some put the number at 700 and the UN officially claimed 1,200 White Army fighters had died during the disarmament campaign. The estimated quantity of weapons collected in the Jonglei disarmament ranged from 3,300 to 3,701 (Johnson 2016b)

The second comprehensive disarmament campaign was launched by the government in 2012, but the count of weapons collected was small and armed groups continued to operate in different part of the state (Johnson 2014a: 306). There was limited cooperation with community leaders; the SPLA was in the forefront of the process, and its contingents were Nuer. This raised concern that ethnicity was a motivating factor behind their rougher and at times violent behaviour which prompted the Pibor commissioner to call for a temporary suspension of the disarmament for fear that Murle youth would join the escalating rebellion led by one of their members by the name of David Yau Yau (Johnson 2016b: 117).

Reconciliation was thought to be the only solution to the cycle of violence. The stalled Jonglei peace process was re-launched and Archbishop Daniel Deng Bul, of the Episcopal Church of South Sudan and Sudan, was appointed by the President to chair the committee for Community Peace, Reconciliation and Tolerance (Johnson 2016b: 115). This second try included all the ethnic groups of Jonglei, and visits to all communities in the state, including: meetings with youths, women, chiefs and

²⁹ The White Army is an armed Nuer youth group formed in 1991 during the SPLA split of the 1990s and continued to recruit more members to add to their rank. They were known for their involvement in the Bor Massacre of 1991 in collaboration with the regular units of Riek Machar's Nasir faction of the SPLA. Their name derived from the fact that they were not a uniformed force and was irregularly armed. The White Army is not part of the militias defined as 'Other Armed Groups' in the CPA (Johnson, 2014:306).

other leaders, all of which culminated in an All Jonglei Peace Conference. A Framework Agreement for peace was signed on 5 May, 2012 by the paramount chiefs of all these communities (Johnson 2016b: 115). The agreement was important owing to its commitment to return abducted women and children. A peaceful disarmament with UNMISS³⁰ involvement was recommended by all the three communities at the peace conference, but was interrupted by the 2013 eruption of conflict in Juba. The recommendation of UNMISS's involvement demonstrates hybridity in action, and is indicative of the possibility of a convergence of the local and international approaches that will be discussed in Chapter Six.

3.9.3 National Reconciliation Process

In 2013, a committee was arranged by the government of South Sudan to champion a national healing and reconciliation process under the leadership of the then Vice President Riek Machar, but he was soon removed and replaced by the Church's leadership (Ashworth 2014: 222). Much as the role of this committee was important for the reconciliation of the fragmented communities, its establishment, as explained below, was characterized by several controversies. The process lacked a legal basis and was alleged to have been politicized. First, the committee was constituted by a Presidential decree instead of an Act of Parliament. The CPA was no longer in force after the independence of South Sudan; which meant that the legal basis for such a process would only come from the parliament. Second, the removal and replacement of the committee's first chair, Dr. Riek Machar, was also seen as a move taken on political grounds. Moreover, there were no reconciliation efforts before 2013,

³⁰ The UNMISS facilitated the entire process, through transport and logistical support, and with their civil affairs officers. At the same time, UNMISS engaged actively with political leaders of the different communities, both in Juba and in Jonglei (Johnson, 2016:115).

presumably to avoid engaging with past hurts which could have jeopardized the unity needed for a referendum vote.

The committee envisaged a two-stage process to create space for reconciliation: first, widespread consultation and listening across the whole country at every level; second, an explicit reconciliation process designed after listening to the nation (Ashworth 2014: 222). Some progress may have been made by the committee, but from my conversations, both formal and informal, with several people during my fieldwork in South Sudan between January and June 2016, I understood that the committee was not popular and people seemed not to believe it would deliver. One of those I spoke to, for example, commented: “It is the committee of the President. It gets its instructions from the President and reports to the President. Key officials of the committee talk as if they represent the government” (KI 7: 4/2/16).³¹ Such sentiments reflect a dissatisfaction among the citizens which is associated with the way they think the government politically manipulates important national processes such as reconciliation.

3.10 The 2013 conflict

The cumulative outcome of the political differences, regional conflicts, legacy of war, failure of the CPA to address grievances, post-CPA bitter inter-communal relationships, rebellions and bad governance, was the 2013 crisis. In December 2013, South Sudan plunged into a violent internal encounter. Opinions are divided as to the causes of the war, but one narrative runs that it was triggered by a political power struggle within the SPLM, the South Sudan ruling party, where a group of politicians from the party earlier sacked from their government positions in July of the same year claimed to have called for reforms in the party. The government’s counter narrative insisted it was an attempted coup led by the former vice-president Riek Machar.

³¹ Interview 7, with a Justice and Peace official: (4/2/2016)

The tensions that amounted to this crisis have been brewing since the middle of 2012 when the schisms within the SPLM have become public³². In the months leading to the December 2013 crisis, the country witnessed political actions by Presidential decrees that were indicative of power struggle whose explosion was only a matter of time. The July to December 2013 build-up to the crisis included the sacking of vice president Riek Machar and the entire cabinets.³³ It seems that the earlier dismissal of senior army generals in January of 2013³⁴ was part of the tension as well. The final rapture was accelerated by a meeting of the National Liberation Council of top SPLM leadership on December 14, 2013.

More than ten ex-cabinet ministers and officials of the SPLM alleged coup plotters, were arrested and detained but Riek escaped from Juba, simply to declare himself a few days later as the leader of the rebellion which was made up of army defectors and some armed civilian Nuer groups (Johnson 2014a: 300). But the Nuer civilians were allegedly reacting to the targeted killings of their fellow Nuers in Juba, said to have been orchestrated by armed youths recruited by the President (Johnson 2014a: 300). Between December 16th and 17th 2013, Nuer residents in Juba were reportedly, targeted in house-to-house searches by the Presidential Guards and ethnic Dinka SPLA; several hundreds were killed and thousands sought protection in UN compounds (Rolandsen and Daly 2016: 157). The conflict spilt over to the army and from the army to the Dinka and Nuer ethnic communities. The ethnic dimension soon became more pronounced as apparently some Dinka and Nuer politicians and military leaders quickly invoked their experiences of the 1991 split in the Movement that pitted Nuer and Dinka communities against each other.

³² Interview 27, with a South Sudanese intellectual: (7/3/2016)

³³ <https://www.theguardian.com/world/2013/jul/24/south-sudan-salva-kiir-sacks-cabinet> Accessed on 20/2/2018)

³⁴ <https://paanluelwel.com/2013/01/22/names-of-retired-spla-generals-mixed-reaction-from-juba/> (Accessed on 20/2/2018)

For instance, one of the participants interviewed for this study said: “the history of the SPLA is littered with episodes from its past. The SPLA was already divided in 1991 when Machar broke away and formed the Nassir group; and so, when the 2013 incident happened, people actually recalled very easily what happened in 1991” (KI 31: 10/2/16).³⁵ It seemed this view was confirmed by the speech of President Salva Kiir at the outbreak of the war when he appeared on national television in military uniform and made a comparison with the ‘Bor Massacre’ of 1991 to describe the incident as a coup attempt. An appeal to past sentiments, such as that made by the President concerning an event that had taken place more than two decades earlier, despite Machar’s public apology, means that the wounds of the past have not yet healed, especially at ethnic and community levels.

As noted above, the failure to incorporate local solutions in the CPA process had left unaddressed people’s grievances which included community feuds, issues of justice and accountability for past human rights violations and reconciliation. The unresolved issues resurfaced with a vengeance as a second rift developed within the SPLM/SPLA in Juba in late 2013 (Hutchinson and Pendle 2015: 8). According to Johnson (2014a: 302), the incident related to the convergence of the two parallel disputes that had been developing since 2005: one in the governing party, the SPLM, and the other in the army, the SPLA; and that both had their origins in unresolved tensions following the spilt in the SPLA in the 1990s and the incomplete reintegration of anti-SPLA forces into the SPLA after 2005.

However, beyond that, the failure of the CPA to appreciate the history of Southern Sudan and the grievances amongst Southerners that preceded the inception of the 1983 liberation struggle was an important determinant of conflict in the post CPA and post-independence South Sudan. Though the liberation movement managed to rally the support of the South Sudanese for the struggle, the CPA took it for granted that the South Sudanese were united. This was true to the extent that unity was needed to fight the number one enemy: The North. With the acquiring of an

³⁵ Interview 31, with an Academic: (10/2/2016)

autonomous government in 2005, and independence in 2011, the full truth lay open for all to see: a fragmented society which was soon burdened with numerous problems; lack of trust between people from the three regions of Equatoria, Bahr el Ghazal and Upper Nile; land issues, border and boundary problems, war-time grievances, an actual or perceived sense of marginalization and an unfair share of peace dividends; all coupled with weak state institutions and bad governance, such a state was strongly prone to conflict.

The inter-communal tensions that characterized relationships amongst tribes after the CPA and independence helped facilitate the spread of the warfare to other parts of the country. Important to note is that ethnicity is a social construction that has been used to suit different political and economic interests. For example, the relationships amongst southern tribes were constructed during the liberation war to reflect collective victimization. This sentiment was crucial and appealed to by the liberation leaders to create a sense of purpose and unity to fight the common enemy, the north. But this was reconstructed in the independent South Sudan to target other groups during and after the 2013 crisis. But to what extent was the war ethnic? To answer this question, one needs to understand the CPA legacy and the link between the SPLM and SPLA.

Out of expediency, and to have a united South Sudan to secure a referendum vote for independence, the Juba Declaration of 2006, without vetting, incorporated all the different militia groups and the predominantly Nuer SSDF, into the SPLA which was already Dinka-dominated. By incorporating the militia groups that were inherently tribal by nature into one already dominated by a single tribe, the government simply institutionalized a tribal army (KI 30: 9/3/16).³⁶ Lacking conventional military training, the idea that a national army's role is to defend national sovereignty did not exist in the minds of the militias. So, when Salva Kiir, a Dinka and Riek Machar, a Nuer, disagreed and fell out, the move was easily extrapolated to forces that were tribal by nature and institutionalized that way. Consequently, they took sides. What the

³⁶ Interview 30, with a Human Rights Lawyer: (9/3/2016)

leaders had to do from a political standpoint was simply to demonize the other tribe and convince his own side to stand up and fight his private war in the name of the entire ethnicity. This is an idea around which the militia group is built: namely, to protect ethnic interests (KI 30: 9/3/16).³⁷ It can be argued therefore, that tribalism or ethnicity was not a cause of the war but something that sprang from political rivalry and the way the army was constituted. The war was described as ethnic because people followed their leaders; but it did not start because the Nuer hated the Dinka or the Dinka hated the Nuer. Johnson (2014a: 307), argues that it was the pattern of fighting in Juba, where (reportedly) the Nuer were targeted and the subsequent defections of mainly Nuer units of the SPLA that led many observers to characterize this as an ethnic war between the Dinka and the Nuer.

This resonates with the view of one participant who stated: “I believe that originally it was not an issue of ethnic conflict. It quickly turned to violence and took on an ethnic dimension because our society is still a rudimentary one where people tend to see things in terms of the ethnicity” (KI 25: 27/2/16).³⁸ Perhaps it is appropriate to describe the conflict as the consequence of a revenge factor rather than an ethnic war. People from both sides were killed and once the killing started, then the revenge dynamic followed. Another participant argues “obviously on the East Bank the Nuer and Dinka and Shilluk, keep fighting each other. But it is misleading to call this conflict an ethnic war. On the West Bank, for example, the Dinka and the Nuer are not fighting but Dinka are fighting Dinka, and in Unity State, it is mostly Nuer fighting Nuer; so, for me it is a revenge dynamic” (KI 25: 27/2/16).³⁹ The impulse for revenge, takes us right back to 2009, as discussed above; the fighting between the Murlei and Nuer, and back to 1991, between the Nuer and the Dinka and even as far as 1983, the re-division (Kakora). The same participant emphasized: Even amongst church leaders, I have heard people say, “We will revenge on them, even if it takes us 20 or

³⁷ Interview 30, with a Human Rights Lawyer: (9/3/2016)

³⁸ Interview 25, with a peacebuilding practitioner: (27/2/2016)

³⁹ Interview 25, with a peacebuilding practitioner: (27/2/2016)

30 years, we will get revenge” (KI 25: 27/2/16).⁴⁰ In this case the desire for revenge seems to thrive where grievances remain unaddressed or where impunity exists.

Conversely, failure to reform the security sector was the main cause of the war, one respondent asserted: the domination of the SPLA by two nationalities: the Dinkas and Nuers, who comprise more than 90 percent of the SPLA, cannot qualify it to be called a National Army (KI 18: 11/3/16).⁴¹ It seems the targeting of specific ethnic communities during the war could not have happened if the country had a National Army in which the population was proportionally represented. In terms of army composition, one of the respondents described the war as ethnic. “if you have different tribes of South Sudan represented in the national army, a single tribe could not be targeted like what happened to the Nuer in Juba, to the Dinka in Bor and Bentiu and to the Shilluk in Malakal” (KI 18: 11/2/16).⁴² The security sector reform to constitute a unified and disciplined national army, as was done during the 1972 AAA,⁴³ would most likely be the solution.

Though the analysis of the 2013 conflict does not seem to indicate that the war was ethnic, the creation of more states by presidential decrees appear to have made it so. Although the idea of having more states is favoured by some communities, the way the boundaries have been set, it does seem to indicate an ethnic agenda. Perhaps that is how the Shilluk in the Upper Nile and some of the people, such as

⁴⁰ Interview 25, with a peacebuilding practitioner: (27/2/2016)

⁴¹ Interview 18, with a member of opposition political party: 11/3/2016)

⁴² Interview 18, with a member of opposition political party: 11/3/2016)

⁴³ When AAA was signed in 1972, the bulk of the fighters were Equatorians. But they agreed for an army of Southern Sudan to be made up of 6,000 and to be divided equally between the three provinces at that time; Equatoria, Bahr El Gazal and Upper Nile, each gave 2000. They were integrated and became a real National Army. This was not the case when the CPA was signed. There was no recruitment and anyone who had not gone to the bush cannot be in the army, yet some new people could be allowed to replace their relatives who were disabled or unable to continue for one reason or the other (source: informal conversations during fieldwork).

the Fartit of Raja, in Bar El Ghazal see it (KI 25: 27/2/16).⁴⁴ Nevertheless, even in Equatoria, there have always been boundary disputes, so the creation of more states could exacerbate those disagreements when the war ends and in that sense the fighting will become ethnic, but more especially among groups like the Dinka, the Shilluk and the Nuer (KI 25: 27/2/16).⁴⁵ In view of this, I would argue that communities may need to be consulted as to what they prefer and their views taken into consideration, even if that would mean holding a referendum to decide on a system of governance including the number of states.

3.11 Role of regional and international actors during the 2013 crisis

As a continental body, the AU has always worked alongside IGAD. In the early months of the 2013 crisis, the AU established a commission of inquiry on South Sudan (AUCISS) headed by the former Nigerian President Olusegun Obasanjo (AUCISS 2014: 8). The mandates of AUCISS were to investigate the human rights violations and other abuses committed during the armed conflict in South Sudan; to investigate the causes of the underlying violations; to make recommendations on the best ways and means to ensure accountability, reconciliation, and healing among all South Sudanese communities; to make recommendations on how to move the country forward in terms of unity, cooperation and sustainable development; and to submit a report within three months. The commission presented its final report in October 2014; and part of the provisions in the ARCSS signed in August 2015 was based on the AUCISS report (AUCISS 2014: 8).

IGAD

In 2015 IGAD again brokered a peace deal between the government of the Republic of South Sudan and the SPLA/M-IO, known ARCSS (ARCSS 2015). The war that resumed ten months later eventually led to a near collapse of the agreement. However, a new peace initiative has been initiated in August 2017 by Regional

⁴⁴ Interview 25, with a peacebuilding practitioner: (27/2/2016)

⁴⁵ Interview 25, with a peacebuilding practitioner: (27/2/2016)

leaders: the South Sudan High-Level Revitalization Forum (HLRF) (Verjee 2017: 1). This IGAD-led process to revive the stalled 2015 peace agreement is supported by the international community through bodies such as the AU, Troika and the UN to end the strife and bring a sustainable solution to the crisis.

UNMISS

Established under Chapter VII after the independence of South Sudan in 2011, UNMISS was mandated by the UN Security Council to protect civilians under imminent threat within the country and to support peacebuilding and state-building. These were to include the core functions of the state, such as the rule of law, police, the justice sector, conflict mitigation and resolution, strategic support to reforms in the security sector, military justice and special protection of women and children (Johnson 2016b: 98). UNMISS also assisted the reconciliation process in Jonglei following the Jonglei inter-communal attacks and the violent civilian disarmament campaigns discussed above, through logistical support and advice, advocacy with authority in the communities, and by sending integrated mission teams to the field to meet the communities (Johnson 2016b: 108).

But the role of the UN in South Sudan after the eruption of the 2013 conflict is controversial. The UN and the international community in general are criticized for failure to intervene decisively at the ominous signs of possible political violence in 2013, occasioned by the internal power struggle amongst the SPLM politicians. Hilde Johnson, the special representative of the UN Secretary General and the head of the UNMISS at the time, admitted that although the situation was tense, the eruption of violence took the UN by surprise (Johnson 2016b). There were other criticisms. Rolandsen and Daly (2016: 154), for example, argue that after independence, the many compromises that had been made with Khartoum, the shrinking of the circle of advisors around President Salva Kiir, the neglect of the party apparatus, and squabbles over money and corruption created such tensions that it was only a matter of time before these tensions would rise to the surface.

The UN has been accused of meddling in the conflict that erupted in 2013 in South Sudan. A respondent reported that both the government and the rebels threatened to bring evidence regarding the UN's support to the opposing side (KI 34: 14/3/16).⁴⁶ This created a tense relationship that affected the delivery of vital humanitarian aid by the UN to the affected areas. Interviews with several individuals, both national and international, also point to a common view that the UN was hesitant even in reporting violations that affected their own personnel, premises and equipment. One respondent commented, "when it is common opinion that the militias of Peter Gadet shot down a UN helicopter near Bentiu in 2014, it was never declared officially by the UN who shot their helicopter down, yet the UN was in the area (KI 34: 14/3/16).⁴⁷ It seems the UN's silence, despite investigations regarding this incidence as reported, made some people to maintain such accusations.

UNMISS has been applauded for protecting civilians against targeted killings by the conflict parties since the eruption of the conflict in December 2013, up to the present. But to what extent has UNMISS protected South Sudanese civilians? This question is crucial, because there were many instances when the UN protection of civilian sites (PoCs)⁴⁸ came under attack. The last case of such an attack was in Malakal in February 2016, allegedly by SPLA troops. UNMISS purportedly, failed to protect civilians within their compounds where civilians were targeted and killed while under the supervision of the peacekeepers. For example, one respondent recalled UNMISS' first reaction to the civilians whose lives were at risk during the first few days of the December 2013 conflict, in Malakal. "They did not open their gates, they were reluctant; they got convinced that the matter was serious after some of those running to the UN base got killed; this was war" (KI 34: 14/3/16).⁴⁹

⁴⁶ Interview 34, with a journalist: (14/3/2016)

⁴⁷ Interview 34, with a journalist: (14/3/2016)

⁴⁸ In April 2014 there was an attack on civilians in UN base in Bor (UNMISS, 2015)

⁴⁹ Interview 34, with a journalist: (14/3/2016)

The same respondent said, according to the IDPs investigation, more than 40 people lost their lives and about 100 were wounded. She added that the UN puts the death toll lower than reported by the IDP's. They based their information on the hospital statistics, but not all those who died were brought to the hospital as some, especially the elderly, were burnt in the tents when armed elements set fire to the camp itself, targeting Shilluk and Nuer ethnic groups (KI 34:14/2/16).⁵⁰ It seems it was this failure that prompted the UN headquarters in New York to order investigations into the behaviour of their own troops in South Sudan. The experience has also demonstrated that very few peacekeeper troops have been ready and are ready to protect civilians as mandated. Although there may be some professional elements among the UN's forces, it seems UNMISS has never given a quick-response fire. Their orders are lacking, and they cannot take individual initiative. But without the UN providing protection to civilians in their bases and other services including feeding, medical and other social services, the situation would have been completely different.

3.12 Conclusion

This chapter has analysed the current South Sudan's conflict from a historical perspective, tracing its origins and links to a colonial and post-colonial Sudan of which South Sudan was part until its independence in 2011. It has critically assessed the 2005 CPA, which ended the Sudan's second civil war; and the role of the liberal peace approach which was used in the peace process. It has also discussed the post CPA and post-independence conflicts in South Sudan. Based on the analysis, it seems that the role of grassroots strategies is crucial to the success and ownership of a peace process, for reconciling bitterly divided communities and sustaining peace. This suggests a possibility for complementarity and hybridity in post-conflict peacebuilding. The next chapter will attempt to understand the local peacemaking institutions across South Sudan in comparison to other African countries.

⁵⁰ Interview 34, with a journalist: (14/3/2016)

Chapter Four

A Comparative Survey of Local Peacemaking Institutions and Practices in South Sudan

4. 0 Introduction

Chapters four and five of the thesis are case study chapters. Whereas the latter specifically, focuses on the Dinka and Nuer local justice and reconciliation mechanisms, this chapter considers local institutions and practices in South Sudan at a general level. It offers a review of tradition, various cultural institutions, conflicts and conflict resolution practices across South Sudan; parts of which predate the colonial and pre-colonial contact periods. It also examines how some of the practices may have changed over time, while allowing for internal and external influences on these very institutions and mechanisms. These topics will be discussed in relation to other African countries within contexts of post-conflict settings, considering diverse types of violent disputes that have been addressed by cultural agencies and mechanisms. The chapter argues that, despite the scale of changes resulting from colonialism, evangelism, modernization, globalization and civil wars, local peacemaking organizations and judicial procedures are still widely used in South Sudan. The chapter comprises four sections: first, understanding local peacemaking institutions in South Sudan-what they are and their roles as well as their strengths and weaknesses; second, the typology of conflicts resolved by local institutions and mechanisms; third, the methods of peacemaking; fourth, the role of women in local peacemaking and, finally, the conclusion.

4.1 Understanding local institutions and traditional authorities

The first and major challenge that one faces in trying to understand the cultural institutions of peacemaking and local justice is the problem of defining the terminologies used to describe them. Key concepts for this study have been dealt with in the theoretical Chapter Two. However, the terms traditional and local have been reserved for conceptualization in this chapter. As a concept, the cultural

institution of peace-making seems so fluid that it has attracted different labels: “traditional”, “local,” “indigenous”, “endogenous” “customary”, “informal”, “grassroots” and “community-based”. While these adjectives have been used interchangeably (Allen and Macdonald 2013: 2), each label when contextually applied, tends to carry some inherent nuances. In this chapter, only the terms “traditional” and “local” are conceptualized, because these are pertinent to this study.

The term “traditional” often tends to suggest profoundly internalized normative structures, patterns followed from time immemorial in static economic and social circumstances (Alie 2008: 133). But African institutions, whether political, economic, or social, have never been firmly established, as will be discussed in detail in this chapter. They respond to changes resulting from several factors and forces (Alie 2008; Huyse 2008: 7-8). It follows that the term “traditional” does not necessarily mean old-fashioned or archaic institutions and practices which are kept intact as they were originally constructed and practised. The term denotes a practice or norm that has a heritage of considerable duration (Mac Ginty 2008b: 121). This heritage has its roots in the pre-colonial or pre-contact history of local societies and has been practised in those societies over a considerable period of time, but has constantly changed over time in the process of interacting with the outside world (Boege 2011: 432).

This raises the question as to whether what is considered “traditional” today is still traditional given the changes that may have taken place in those societies. Moreover, as discussed in Chapter Two, such approaches vary considerably from society to society, from region to region and from community to community. South Sudan for example, is a country with more than 60 ethnicities. It is likely there are as many approaches as there are ethnic groups albeit, the variations many not essentially be in substance, but practice and interpretations. Against this background, Mac Ginty (2008a: 151) observes that traditional approaches are always context-specific and has rightly cautioned against over-homogenizing the “traditional”.

The term “local” on the other hand has been conceptualized in diverse ways as; “level”, “local institutions”, “agency”, and “process”, among others. I have used the term throughout the thesis as a more appropriate concept to reflect broader issues relating to conflict, and in line with the current peace building literature on ‘the local’. To situate my study within this body of literature, and to provide a better understanding, I will analyse each of the four main conceptions of ‘the local’.

First, as a level, the term has been defined in a descending order from the global to the regional, from the regional to the national, and from the national to the local (Shaw and Waldorf 2010: 6). However, Goodale (2006) has challenged the conceptualization of ‘the local’ in a nested set of ‘levels’ in descending order. The notion of ‘levels’ obscures the fact that no location in the world exists in detachment from national and global processes; and that it would be hard to find places that, despite being remote from metropolitan centres are not pervaded by circulation of ideas and practice. When the local is conceptualised as a level, we place it in different frame and set it up to carry meanings of remoteness, marginality and bounded contours (Shaw and Waldorf 2010: 6). This means that through a levels-based definition we depoliticized locality, constructing it as a residual category characterized both by separation from the international, regional and national, and by absence of modernity.

Second, as local institutions, Schierenbeck (2015: 1024) argues that ‘the local’ can be understood through the lived experiences and knowledge of mainly local officials and citizens and interpreted by conducting interviews and extensive field work in the specific settings. This resonates with the case study methodology and a social construction paradigm adopted for this inquiry. As institutions, the local has been analysed through the lens of decentralisation. The establishment of an accountable local government branch of the state in a post-conflict setting, with inclusive and democratic features, is what brings the new order, ideally of peace, reconciliation and reconstruction to the citizens (Schierenbeck 2015: 1024). This means that the legitimisation of the emerging regime is key to establishing a meaningful state-society relationship. In this aspect, the local is identified through its local institutions

and their officials. Schierenbeck (2015: 1025) reports on Hyden's argument that the notion of the local in an African setting refers not only to the grassroots but also to local government officials, since members of the elite as the elected representatives are 'brokers' for the poor. As a result, there are few, if any where subalterns act in resistance to what they perceive as oppressive structures.

Third, 'the local' is conceptualized as agency carried out by grassroots movements, political parties and civil society at local level. Schierenbeck (2015: 1026) observes that in their analysis of local agency in the post-conflict setting of KwaZulu-Natal, Jarstad and Hoglund defined agency as political participation in broader sense; that is as participation in both political parties and community activities. Similarly, Kappler and Richmond (2011) argue that in the aftermath of the 2006 Palestinian parliamentary elections, external actors have undermined local efforts to overcome political and societal fragmentation. Here the local is defined as grassroots agency, where grassroots initiatives and activities should be 'navigation points' and act as support for policy makers and peacebuilders. This means without context specific and detailed knowledge of local agencies, the peacebuilding framework will reflect externalized conception of civil society, what Kappler and Richmond call romanticizing civil society (Kappler and Richmond 2011). This analysis points to the importance of understanding, recognising and including the local in peacebuilding interventions if the role of external actors is to lead to sustainable peace.

But is the local static and always a victim of exclusion by external interveners? Schierenbeck (2015) argues that there is a need to challenge the local as static and a victim to what is being done to it. She argues that in the critical school of peacebuilding there is a growing acknowledgement that peacebuilding in post-conflict societies involve local voices and multiple notions of 'self' and 'other'. But the immediate concern is what outsiders, interveners and peace builders do with this knowledge and how the knowledge translates into practice that allows for efficiency and local emancipation in building peace. Similarly, Hughes (2009) in her analysis of a women's campaign for justice in East Timor, shows that local actors (poor people) might not necessarily, or at all regard international interventions as

oppressive. Local actors tend to consider intervention as an economic opportunity and try to reconstruct or renegotiate the agenda promoted by both local elites and liberal peacebuilders (Hughes 2013). So, the 'local' is not simply co-opted into a liberal peacebuilding agenda. Instead in practice, international interventions often takes in complex ongoing local struggles with multiple subalterns (Schierenbeck 2015).

The 'local' turn highlights the importance of understanding local perceptions of peace and people's views about bringing sustainable peace in their communities. However, it's equally important to understand people's perceptions of power structures and their own position in peacebuilding. This implies not only recognizing the complexity between the local communities and international actors involved, but also acknowledging the complexity and multiple forms of agency carried out by local representative and institutions (Schierenbeck 2015: 1027).

Fourth, the local is defined as process in constant flux and change, as an activity that needs to be frequently situated and contextualized in time and space. Contextualized knowledge can help us to understand and interpret "the local", although it might not be enough to grasp the complexity (Schierenbeck 2015: 1024). According to her, Mac Ginty argues that one of the main reasons for the ambiguous position of the local is the (ethnocentric) territorialisation of the concept. The local turn is part of this trend with its focus on subnational levels of governance and geographically situated local governments. Rather, he advocates the need to de-territorialise the local and regard it as an activity that needs to be situated and contextualised: He contends that through their everyday activities, individuals and communities can give localities, workplaces and networks a reputation. Thus, Mac Ginty calls for 'everyday knowledge', like the 'navigation points' offered by Pogodda and Richmond (Schierenbeck 2015: 1026)

Other scholars such as Kappler for example, argue along the same lines; for a process-oriented localisation, where the local agency is viewed as 'situated in time and space and subject to constant transformation. In her empirical study of Bosnia-Herzegovina and Cyprus she shows how local actors constantly position and

reposition themselves in peacebuilding network (Schierenbeck 2015: 1026). On her part, Paffenholz states that the construction of 'the local' and the local/global as binary entities within the critical school of peacebuilding have made 'the local turn' less relevant for peacebuilding research and practice (Schierenbeck 2015: 1026). She suggests a need for enhanced analysis of how the local/international is constituted globally and in various settings. She argues for closer collaboration with area researchers to be able to gain in-depth knowledge of local settings and power structures while building peace.

The different contributions and conceptions of the local converge on the need to understand the local for constructive and effective engagements in peacebuilding. Local knowledge refers to the understanding, skills and philosophies developed by societies with long histories of interactions with their natural surroundings. For rural people, local knowledge informs decision-making about fundamental aspects of day-to-day life.⁵¹ This study aims to understand the potential and limits of local approaches to modern conflicts and peacebuilding. It will therefore, mainly rely on the conceptualisation of 'the local' as agency.

4. 2 Traditional Authorities during colonial and post-colonial periods

As understood and used in South Sudan, the term traditional authorities refers to kings, chiefs, elders and spiritual leaders such as prophets and so forth, Badal (2006) cited in (Hoehne 2008: 14). Ethnic communities in Southern Sudan had varied and complex kinds of traditional authorities before colonial rule, known by various titles. However, institutions of traditional authority differ markedly among groups and in distinct locations. Among some ethnic communities, traditional authorities during colonial periods had very weak and unstable positions. Among Nuer and Dinka, for example, various kinds of traditional authorities existed. Evans-

⁵¹ <http://www.unesco.org/new/en/natural-sciences/priority-areas/links/related-information/what-is-local-and-indigenous-knowledge/> Accessed on May /3/2018

Pritchard (1940), observes that since both groups are acephalous⁵² societies, the power of traditional authorities among them is limited and depends on the individual skills of the person holding it. Although these traditional leaders were acknowledged as overall authority, they were not necessarily the kind of cooperative leaders that the colonial government needed (Leonardi et al. 2010: 23). To secure the kinds of compliant leaders that would serve British interests, the specific title of chief was created through the 1931 Chiefs' Court Ordinance, as part of the British administrative system of indirect rule (Leonardi et al. 2010: 23). But this does not mean that the relationship between colonial administration and chiefs was devoid of problems. As will be discussed later in this Chapter and in Chapter Six, sometimes it was characterized by coercion and harsh treatments.

According to Johnson (2003: 12), Native Administration (NA)⁵³ proceeded relatively quickly in Northern Sudan during the colonial rule compared to the Southern Sudan where it took longer. Only a few groups in the South such as the Shilluk, the Anyuak and the Azande, knew centralized and hierarchical structures of authority; but the colonizers sought to bring the kings under control and to diminish their power (Johnson 2003: 12). In the absence of reliable traditional institutions, the British introduced similar hierarchical structures to those of the North in the South among the sedentary agriculturalist communities, such as Equatoria, where chiefs and sub-chiefs were nominated to represent their communities. Equally among the Southern pastoralist societies such as the Dinka and the Nuer, these offices had to be created and the result was the chiefs' courts of Southern Pastoralists (Bradbury et al 2006: 22). The British implemented the same policy to the different societies but with uneven effects: In places with established hierarchical authority, chiefship was shaped by pre-existing roles. But in Dinka and Nuer areas (as well as in other ethnic

⁵² Acephalous (headless) societies are without formal political leaders, without any institutionalized system of power and authority (Boege 201:438).

⁵³ This was the indirect rule policy of colonial administration. An administration must in its initial stages demand some form of indigenous leader through whom orders may be transmitted (SAD 72/6/40).

groups without centralized authority) the policy reshaped societies quite dramatically.

The indirect rule system introduced in the 1930s, commonly known as NA, was already practiced in other parts of colonial Africa. Brock-Utne (2001: 4) argues that it was a common practice across all the British colonies in Africa that imperial administration was based on the principle of indirect rule. The basic principle of NA was that local administration should be conducted through indigenous structures of authority, employing local law or custom (Bradbury et al 2006: 22). According to Johnson (1986: 68), the explicit aims of indirect rule were; first, to keep the costs low and administration simple; second, to “develop” native institutions by eradicating their “negative” aspects and fostering “positive” ones. This was one-way Sudanese values and those of other African countries were eroded and negatively influenced by colonialism.

As will be discussed below, hereditary traditional and spiritual authorities in South Sudan were gradually removed and replaced by more loyal colonial government chiefs. The regulation and management of local conflict under the Anglo-Egyptian condominium rule became part of the responsibilities of the government which operated through the NA. This affected existing institutions of conflict resolution, such as those of the Dinkas and the Nuers in South Sudan (Bradbury et al 2006: 22). The administrative structure established under the condominium endured until the end of the first civil war in 1972. With the successive post-colonial regimes of Sudan, Laws were enacted which limited and weakened the powers of traditional leadership. For example, in the 1970s administrative changes under the Nimeri government, including the abolition of the NA significantly weakened local control over lands and livelihoods (Bradbury et al 2006: 22). This means that both colonialism and the post-colonial administrations have contributed both to the strengthening and weakening of the powers of customary institutions in South Sudan. I will come back to this later in this Chapter and in Chapter Five.

Generally, traditional authorities work as mediators, arbitrators, religious specialists, but also occasionally play a political role as leaders in wars/conflicts (Johnson 1994).

Each community has developed and practises certain ways of resolving conflicts when they arise and these ways are centred on traditional chiefs and elders. This resonates with the argument of Omeje (2008: 88) that peacemaking roles in Africa have been generally constructed and institutionalized around indigenous leadership such as; traditional kings, chiefs, priests, healers, elders, big men and others. The focus of the section below will be on elders, traditional chiefs and spiritual leaders.

4.2.1 Council and role of elders

All over South Sudan, elders occupy a leading position in society and are highly respected as custodians of customs, cultural values, traditions, knowledge and heritage. This was the case until the SPLM/A war of 1983-2005, irrespective of ethnic groupings; Nilo-Saharan peoples. For example, Western Nilotic: Dinka, Nuer, Atuot, known as Jii; Acholi, Pari, Shilluk, Anuak known as Luo. Eastern Nilotic: Bari, Mundari and Ateker (Toposa Jiye, Nyangatom), Maa (Lotuho, Lokoya). And Niger-Congo peoples, for example, Adamawa and Ubangian; Zande, Ndogo, Sere, Mondu, Bai and Bviri (Johnson 2016a: 32).

The Lotuho (Otuho), one of the ethnic groups that occupy the Eastern part of South Sudan, for example, is stratified according to age groups which are promoted to take leadership roles through rites of initiation. The highest and most respected of these age-groups is the Council of Elders which is also entrusted with a peacemaking role. Kariuki (2015: 1) emphasizes that the institution of elders is one of the crucial organizations for conflict resolution in most African societies. Similarly, Malan (1997: 28) argues that elders are respected as trustworthy mediators all over Africa because of their accumulated experience and practical wisdom, and so preference regarding peacemaking was traditionally given to them.

These cultural leaders, use their position of moral influence to find acceptable solutions to disagreements. Among the Acholi for example, traditional chiefs and elders are regarded as custodians of cultural values, norms and traditions that guide societal relationships both internally as well as with other ethnic communities. They are regarded as guardians of lives and property such that when disputes arise, they

are the ones who resolve them and reconcile the conflicting parties by appealing to traditions and customary law (KI 16: 19/6/16).⁵⁴ Similarly, the main institutions in Dinka and Nuer communities are comprised of elders, chiefs, spiritual leaders and prophets (Nuer).

Elders are highly esteemed for their knowledge of the customs, myths and history of the communities and the relationships of the parties in conflict. Their rich experience in conflict regulation, their skills in interpreting signs of reconciliation and their skills as orators, facilitators, peacemakers, as well as their social capital as leaders of the community/communities, empower them to negotiate a resolution to the conflict that is acceptable to all sides (Boege 2011: 442). Their advice is taken seriously and when they caution the community against actions such as going to war, for example, people would listen, because they give convincing reasons and could even predict the consequences of going to war. This may be because of their roles as oral historians, able to discuss causation and consequences of rash actions based on past knowledge.

Dispute resolution by elders can be categorized in two main ways: The council of elders and a single elder (Kariuki 2015: 1). A council of elders usually consists of more than one elder and acts as a form of third party in dispute resolution. The second form of organization is where a single elder presides over the dispute resolution process. The most basic example of this organization is where a family, clan head or the eldest individual in an extended family resolves the dispute related to that family.

But elders have sometimes demonstrated the tendency to manipulate traditional institutions and their mediation role to their own advantage as opposed to those of other members of society, particularly women and youth, who are largely excluded from membership in the council of elders and their role in conflict mediation and arbitration. This sometimes resulted to uneasy relationships. For, example, many

⁵⁴ Interview 16, with an Acholi elder: 19/6/2016)

have argued that abusive and autocratic practices of traditional authorities helped to fuel the civil war that ravaged Sierra Leone in the 1990s by driving aggrieved young men away from their villages, and into the various armed factions, in rebellion against a social system that trapped them in a rural underclass (Manning 2009: 1).

A respondent said in nearly all ethnic groups in South Sudan, membership of the council of elders is the preserve of elderly men who most of the time pass verdicts and impose solutions regarding conflicts involving women and youth without their active participation (KI 26:14/3/16).⁵⁵ Another respondent said women, for example, have been and still are denied the freedom to divorce and leave their abusive husbands, simply to protect the family name, image and marriage institutions and bride wealth (KI 29: 19/2/16).⁵⁶ Protecting and promoting relationships during conflict resolution may be in line with the African philosophy of peace, which focuses on harmony and peaceful co-existence, but it is inappropriate in situations where there are persistent practices of oppression and injustice such as abusive marriage relationships. The same respondent said that;

“women are the victims of certain practices perpetrated by elders. She gave an example of one woman who requested divorce after frequent cases of domestic violence and battering by her husband. It was turned down by the elders each time she reported it and finally, the woman was killed by her husband. She said that had there been at least one woman in the council of elders she would understand what her fellow woman was going through and would have supported her case” (KI 29: 19/2/16).⁵⁷

This is one example where the council of elders is insensitive to specific situations and failed to cater for the needs of all members of the society. But through their intermediary and an investigative function, councils of elders play an advisory role

⁵⁵ Interview 26, with a South Sudanese journalist: 14/3/2016)

⁵⁶ Interview 29, with a Dinka woman: (19/2/2016)

⁵⁷ Interview 29, with a Dinka woman: (19/2/2016)

to the traditional leader on how to resolve conflicts. By listening to the view of the members of the society, a council of elders advises on solutions that may promote peace and reconciliation between the aggrieved parties and so, maintains the overall objective of sustaining the unity and cohesion of the community (Murithi 2008: 26).

Becoming an elder

Across countries of the African continent, one becomes an elder⁵⁸ by age. Most of the participants (27 out of 43) interviewed for this study between January-June 2016, also said age is one of the main criteria for becoming an elder in many tribes in South Sudan, particularly among the Nilotics. One respondent said, among the Acholi just as among the Otuho tribe of Eastern Equatoria state, members of an age-set are initiated through *Orwanga* (initiation rite) into an age group which assumes a specific leadership position and a role until another age-set is initiated to take over (KI 15: 18/6/16).⁵⁹ This means that one cannot rule beyond his generation, but this does not contradict the role and position of elders as peacemakers. The Othuo is well known for keeping to this system to the extent that a succeeding generation such as the *Monyimiji* (youth), for example, could remind traditional experts about the initiation schedule for the next generation of leaders (KI 15: 18/6/16).⁶⁰ While generally this could be considered democratic governance and peaceful transfer of power, it seems at a political level this value is being eroded by the wave of changes sweeping across the African continent where there is a growing tendency, which is also frequently and sometimes successfully challenged, amongst leaders to remain in political power despite constitutional term limits.

⁵⁸ It is important to note that the term elder is generic as it includes people within certain age brackets. Sometimes the title is earned by positions of responsibility in a community; as such chiefs fall in the elder category. However, as used in this study, elders refer to senior men who serve as conflict mediators and advisors to chiefs and kings.

⁵⁹ Interview 15, with an Acholi elder: (18/ 6/2016)

⁶⁰ Interview 15, with an Acholi elder: (18/6/2016)

We have seen frequent attempts in recent years to change some clauses in national constitutions that remove Presidential term limits, for example, in Uganda, Burundi and Rwanda. The result of such moves is sometimes violent conflict. The current war in South Sudan has also been attributed to a power struggle within the ruling party (KI 31: 10/2/16);⁶¹ (Johnson 2014a; Rolandsen and Daly 2016). What happened to the African values and systems of governance? Is this the question of how much colonialism destroyed in its establishment of centralized, bounded nation-states, for example the Buganda Kingdom among others? These questions are beyond the scope of this study, but ones that warrant investigation. However, monarchs and hereditary leaders in general often remain in power and are only replaced by their sons when they die. The idea that initiation as an African practice is democratic and a means of peaceful transfer of power does not seem to translate into democracy as understood by the West. Nevertheless, major inter-communal disputes in South Sudan that have resulted in loss of lives and serious offences are resolved by members of the Council of Elders who also act as advisors to chiefs and Kings.

4.2.2 Chieftainship and role of Chiefs

The local history of chieftainship in South Sudan dates to the first contact of the local community with the colonial rule of the Anglo-Egyptian condominium of Sudan. Leonardi (2015: 2) argues that these histories locate chiefship firmly in the encounters of rural people with the forces of state power, dated to quiet specific moments in the nineteenth and early twentieth centuries; which means it represents the first coming of the state. Prior to colonialism, as noted above, there were various forms of traditional leadership known by various names with distinct though sometimes overlapping roles. The creation of the institution and specific title of chief through the 1931 Chiefs' Court Ordinance, as part of the British administrative system of indirect rule, (Leonardi et al. 2010: 23), dramatically changed the institution

⁶¹ Interview 31 with an academic: 10/2 2016

and role of traditional authorities. With the establishment of the colonial chiefs' courts, powers to administer justice were given to the chiefs who were appointed by the colonial administrators. This was a major shift in traditional leadership in South Sudan and it had a far-reaching impact on traditional politics, governance and maintenance of order.

The chiefs' courts were to administer the native laws and customs prevailing in the area over which the court exercised its jurisdiction provided that such native laws and customs were not contrary to justice, morality and order (Jok et al. 2004: 14). The question is, whose justice, morality and order? These colonial ideas referred to the Western notions of justice, morality and order as represented by the colonial administrators. Colonial administrators and District Commissioners (DC) were to approve certain traditional practices, yet remained suspicious even of those they have approved. Sudanese and African justice systems, conflict resolution and reconciliation practices were measured, permitted or prohibited based on colonial needs or Western values.

The result of this cultural interference is part of the reason why the use of the term local rather than traditional is preferred in this study when referring to customary conflict resolution and reconciliation practices in South Sudan and other African countries that were subjected to colonial administration. However, while in colonial terms, the enactment of the chiefs' court ordinance was an act aimed at ensuring the chiefs' allegiance to the colonial administration, it also formally recognized the realities of traditional ethnic life and overall it strengthened the power of customary law in the nation (Jok et al. 2004: 15). But the transfer of power from the previous traditional spiritual leaders such as the Dinka *Bany Bith* (Spear Master) and the Nuer *Kuar kwac* (Leopard-Skin Chief) or *Kuar muon* (Earth Master) to chiefs by the colonial administration for example, as I will discuss in Chapter Five, may not have been a formal recognition of the local justice systems.

The new government chief acted as intermediary with the colonial officials, but continued to work with other community leaders, such as spiritual experts and those responsible for other specialist functions (Leonardi et al. 2010: 23). This means not

only recognition of the roles of the various traditional authorities, but also acknowledgement of colonial chiefs' lack of spiritual, magical and ritual expertise. Some chiefs' courts referred people to diviners or other practitioners outside the court to hear cases related to witchcraft accusations or to admit evidence derived from supernatural activities, since for many people the results of rituals and oracles, or the pronouncements of diviners, are a credible form of evidence (Leonardi et al. 2010: 55). It seems chiefs' courts in some rural communities still make such referrals to specialist functionaries. According to Hutchinson and Pendle (2015: 10), after the independence of South Sudan, and despite a prohibition from the national government of such referrals by chiefs, Nuer chiefs referred difficult cases to prophet Nyachol, a Western Nuer female prophet who operated as an informal appeal judge on the margins of the dysfunctional government court system (Hutchinson and Pendle 2015: 10). The persistence of chiefs and families to seek her judicial and purification services suggests that local justice is still valued by some largely rural communities of South Sudan.

Becoming a chief

There are three different methods in contemporary South Sudan through which chiefs are made: hereditary arrangements, democratic elections and confirmation by the relevant authority, and appointment by the government or rebel authority. Hoehne (2008: 14) categorized these procedures as; the "hereditary principle"; the "democratic principle"; and the "authoritarian principle". First, prior to the British rule, which is still the practice in some communities, traditional leadership was hereditary in most communities in South Sudan. Based on the predominant patriarchal system, the incumbent chief chose, from among his male children the one with qualities that befitted chieftainship. Among the South Sudanese Acholi, in normal circumstance, the choice fell on the first-born male child of the first wife, as chiefs were known for marrying more than one wife. But certain qualities were required. For example, among the Nuer, five qualities have been identified as characteristic of a leader:

integrity, wisdom, justice, generosity, and skill in public speech (KI 2: 23/1/16).⁶² While these may still be the required qualities, it seems in some communities they exist more in principle than in practice since, at least from the SPLA war time, it has been possible for anybody to become a chief by appointment even those considered to be lacking in the required qualities and to be unpopular in their communities.

A crucial point to note is that traditional as well as colonial chieftaincy excluded women from this role. Asked if there are women chiefs in Dinka community, a female respondent in Agok said;

“No, even if you go to the local court; you would not find a single woman. Even in this administrative area, all commissioners, executive directors and advisors are men. We have only one advisor in the whole government who is a woman. In line with the national constitution which grants 25 per cent representation to women, we made a request to contest for positions of chiefs. I was one of those who asked to run for the post of chief in my village, because we have good women with wisdom who are equal to men or could even outperform them, but nobody agreed on this. I wish in future that women can also be chiefs, to run these local courts, and play a role that may defend the rights of women, and be able to address the inequality of men over women and to also defend men who suffer injustice” (KI 29: 19/2/16).⁶³

Another respondent charged the British colonial masters for neglecting the involvement of women in community leadership and peacemaking. According to him, when they introduced the office of chief, the British only asked for men and not women and in that way set a precedence that has continued through post-colonialism to the present day.⁶⁴ This resonates with the position of Brown (2007:7)

⁶² Interview 2, with a Nuer chief: (23/1/2016)

⁶³ Interview 29, with a Dinka woman: (19/2/ 2016)

⁶⁴ Interview 3, with a Nuer youth: (27/2/2016)

in Boege (2011: 447) who argues that “Colonial and later western accounts have persistently overlooked the significance of women’s activities for political life within indigenous communities and have rendered invisible traditional forms of activity in which women’s work was and is highly valued”.

Second, one could become a chief through selection (local elections). Selection of chiefs for example, among the Ngok Dinka began during colonial administration in 1940s (SAD 72/6/52).⁶⁵ He is elected by his community to represent their interests in the court established, and recognized by the government who appoints him to the various levels of local government structures and appoints a chief nominee as Paramount Chief at County level. Chieftainship operates according to the structures of local government enshrined in the national constitution of South Sudan; County, Payam and Boma (Local Government Act, 2009).⁶⁶ But this is not homogenous and not true for every community, there is varied picture across the country. Leonardi (2015: 2) for example, observes that individuals have been recognized or selected as chiefs because they were seen to know how to deal with government, both in the sense of developing strategies for coping with its threats and demands, and in the related sense of brokering deals with it.

Third, one is directly appointed by the government or rebel leadership (during war time) often without respect for the wishes of the local population. The criteria continued to change during the post-colonial period and during the two decades of civil war in South Sudan (1983-2005). Badal (2006) cited in (Hoehne 2008: 14), observes that in the post-colonial years and particularly during the civil wars, many chiefs were simply appointed by the state agents and/or guerrillas. Both the SPLM/A and GOS appointed chiefs and politically and militarily manipulated the institution to their advantage. In these circumstances politics plays a role in the making of a chief,

⁶⁵ Howell’s DPhil thesis, “A comparative study of customary law among the cattle-owning tribes in the Southern Sudan”. Part 2 “Dinka and Shilluk law”. Howell, P.P. 1950; Durham University Library (DUL), Special Collections GB 0033, Sudan Archive Durham (SAD).

⁶⁶ Local Government Act of South Sudan, 2009.

as County commissioners and sometimes state governors oversee the elections and/ or appointments of chiefs. One respondent remarked “most current chiefs are appointees of the government who, in the eyes of their communities, lack the required powers such as that of casting an effective curse that could sentence somebody to death and that is why they have lost respect” (KI 3: 27/2/16).⁶⁷ It seems the main concern here relates to the idea of accountability and legitimacy.

But if this means chiefs are now largely accountable to the authorities who appointed them and therefore, have no legitimacy, how were the British-made chiefs accountable to anyone other than the British? Chiefs have always been politicized and politically appointed, particularly from the period of the slave trade onwards (Johnson 2016a). The controversy in recent years, in some societies around how one becomes a chief has implications not only in his justice role and how people perceive it, but also about legitimacy in relation to historical and hereditary chiefship. (Leonardi 2007) reports one such experience among some clans of the South Sudanese Kakwa where hereditary and SPLA made chiefs and their supporters engaged in disagreements about legitimacy after the end of the APLM/A war.

Role of Chiefs and current challenges

Traditional leadership (chieftaincy) since pre-colonial time has been the office of senior royal (chiefly) family men. However, the cycles of war over the last three decades, have also seen younger men, sub-chiefs, non-chiefly family men, promoted as representatives and “chiefs” across South Sudan and refugee camps, as leaders in crises. This was the case among the South Sudanese Acholi and Madi refugees in Northern Uganda (KI 16:19/6/16).⁶⁸ This shift has introduced changes that have affected the long domination of senior men and chiefly families, providing space for younger people to participate in what used to be known as the elders’ profession. In some communities, including the Dinka and the Nuer, some level of

⁶⁷ Interview 3, with a Nuer youth: 27/2/2016)

⁶⁸ Interview 16, with an Acholi retired chief: (19/6/2016)

education and ability to speak Arabic and English have been introduced as conditions for becoming a chief. A respondent said, this allowed several young Nuer to become chiefs in 2010 (KI 10: 7/2/16).⁶⁹ Apart from their age, the significance of the shift was in having leaders who were well-informed, but who might well lack experience, cultural knowledge and community management skills. They might also be Pentecostal Christians which could result in a degree of tension between traditional and Gospel values regarding ritual performances. It seems particularly, Pentecostal Christians tend to be uncompromising about the spiritual roles of traditional leaders.

The wartime period (1983-2005) witnessed a huge conversion to Christianity in South Sudan. Hutchinson (2001: 316) observes that beginning in the mid-1980s; younger Nuer men and women particularly from Western Nuer, for example, began to embrace Christianity. She observes that older men, by contrast, were more reluctant to adopt a new religion that directly undermined their privileged positions as the sacrificial mediators of their religious supplications. But traditional institutions and authorities have not been spared changes. Leonardi et al. (2010: 54), observe that traditional leaders are generally said to have lost influence and authority with the rise of the churches and the wider cultural and social changes of recent decades, but they remain important especially in rural areas, and among pastoralist and farming communities. These transformations are not however, confined to South Sudan as native societies everywhere in the world have come under outside influences. Boege (2011: 437) observes that indigenous societies have not been left unchanged by the powers of originally European-capitalist expansion, colonialism, imperialism, evangelism and globalization.

On the other hand, the war and extensive militarization of society, especially among young men have inevitably eroded the chiefs' power to enforce the orders of their courts. Most respondents (31 out of 43) interviewed by this study between January and June 2016, attributed the erosion of traditional values to war, displacement and

⁶⁹ Interview 10, with a Nuer elder: 7/2/2016)

refugee life and the proliferation of arms in the hands of civilians who became militias or self-defence groups. One respondent claimed;

“In the 90’s when we were doing the people-to-people peace conferences, we knew that if we had the chiefs in agreement, then the youth would follow. I think today you can’t say that. Today the youth have their guns, they have their own leaders. I think they still respect the chiefs on certain issues but when it comes to fighting, I don’t think they respect the chiefs, I think the youth make their own decisions” (KI 25: 27/2/16).⁷⁰

The two decades of war have very much reduced the power and status of tribal chiefs who are pivotal in the functioning of customary law, and has undermined the formal legal infrastructure of South Sudanese society. The implementation of military tribunals in place of customary courts throughout the civil war over time eroded the status of chiefs within their communities Dengtiel (2001) in Jok et al. (2004: 15). Despite these changes, the chiefs are still very important pillars of society, one respondent stated, especially since over “80 percent of our issues are still customary law based and many of our people are not educated and are still living in rural areas, so the chiefs are very important in our life” (KI 1: 20/1/16).⁷¹ In general, people frequently express a preference for the negotiated, flexible settlements of the chiefs’ courts over any rigid application of written law (Leonardi et al. 2010: 39). But these are not without challenges.

Many chiefs including courts officials in rural communities of South Sudan are illiterate and have little or no training on the laws and regulations governing local courts. This means the courts are likely to overstep the bounds of their official mandate, for example by hearing cases they should not, or by levying fines that far exceeded the allowable amount, or otherwise act outside the law. Some of these challenges are common across the continent. Rukuni et al. (2015: 75) for example,

⁷⁰ Interview 25, with a peacebuilding practitioner: (27/2/2016)

⁷¹ Interview 1, with a Lawyer: (20/1/ 2016)

observe that the lack of written rules makes the traditional arbitration process in Zimbabwe vulnerable to abuse and bias as judgment is at the discretion of the chief. Yet, some of the arbitrators are often ignorant of the provisions of state laws on an issue they may be addressing, hence likely to pass a judgment that may be at variance with state laws. With regard to Sierra Leone, Manning (2009: 5) said that supervision of local courts is very minimal, and they also lack judicial independence as their ties to local governance systems often make them vulnerable to influence and bias. Moreover, government authorities have sometimes also relegated these institutions to minor roles or even bypass them entirely in some instances.

Despite the outlined limitations, the quest to apply indigenous justice mechanisms is likely to continue. Throughout the global south there are vast regions in which the power and authority of state law is “nominal rather than operational”, Falk Moore (1986:150) cited in Allen and Macdonald (2013: 3). In South Sudan, most rural populations rely on the local justice system (KI 1: 20/1/16);⁷² in post-conflict Sierra Leone it has been estimated that some 85 per cent of the population does not have access to formal justice and relies upon traditional measures Sriram (2007: 598, cited in Allen and Macdonald (2013: 3); in Afghanistan in those areas not controlled by the Taliban, an estimated 80-90 per cent of all disputes are mediated in the customary system Wojkowska,(2006) cited in (Allen and Macdonald 2013: 3).

4.3 Role of Spiritual Agency and Traditional Religious Actors

The centrality of spiritual agency in all human spheres is the basis for a spiritual dimension that exists in indigenous dispute resolution. Despite its many aspects, many Africans see life as holistic. Traditional approaches cannot be classified into political and juridical, rather they are holistic, comprising also social, economic, cultural and religious-spiritual dimensions (Boege 2011: 441). This is in accordance with the entirety of traditional lifestyles and world views in which the different spheres of societal life are hardly separated Barcham (2005) cited in (Boege 2011: 441). For

⁷² Interview 1, with a South Sudanese Lawyer: (20/1/2016)

example, for most African people, death does not mean the disappearance of the dead. The dead are rather understood to continue in a spirit form and as such are recognized as the living dead or ancestors. When called upon, ancestors can intercede and advise the living on what needs to be done (Nabudere 2004: 12). Such intercession forms a crucial part of reconciliation rituals where according to *Ubuntu* philosophy, the ancestors reveal their ongoing presence through the lives of the living.

In addition to the ancestors, there are also the unborn who are understood as existing in the future. As such the living are required to ensure that the unborn are brought into the world and that they are required to remember those that lived before them (Nabudere 2004: 12). This means that as the individual is related to the community, so too is the present age linked to the past and to the future. Life is thus seen to embrace the unborn, the living and the living dead. It is a world of beings both visible and invisible, in which it is possible for the living to engage with the unknown in ways that have a direct influence on their own being, behaviour and obligations (Nabudere 2004: 12). These invisible forces represent a set of African explanations for life that cannot easily be explained in terms of Western rationality.

Traditionally, conflict is understood as an integral part of uncertainty in human existence, and supernatural beings, as part of that unexplained world, have a privileged understanding of it, because they represent historical and future needs (Nabudere 2004: 13). The spiritual dimension of conflict resolution refers to creating and restoring impaired relationship with God, the spirits, ancestors, family and neighbours as the case might be (Mbiti 1991). This is critical for restoring other relationships at the physical level. In this context, rituals play a key role in the reconciliation process. Ritual ceremonies bring together the people, the past, the present and the future, the ancestors and the gods for the sealing of the conflict resolution (Boege 2011: 442). They help to link people to the past, present and future. Mbiti (1991) argues that Africans are deeply religious; religion can be found in all aspects of life including rituals, ceremonies, festivals, symbols and arts, sacred places, objects, proverbs or saying, beliefs or worship.

The Nuer, for example, hold the concept of *kwoth*: an all-pervading deity associated with the sky, but present to a greater or lesser degree in all things, which supplies, directly or indirectly, an explanation for phenomena which cannot be accounted for in terms of everyday life (Howell 1954: 204). This applies to material objects, human beings, events, and situations. The word *kwoth* also has connections with the entire range of spiritual forms and concepts: ancestral spirits, household spirits, medicine spirits, talking spirits, sky spirits, earth spirits (Howell 1954: 204). Against this backdrop, spiritual leadership is so significant among the Nuer, and it seems that is also the main reason Nuer prophets were so numerous and powerful.

Traditional healers, diviners, herbalists, spiritual seers also play a key role in conflict resolution throughout different societies in Africa. Several respondents interviewed for this study (28 out of 43) reported that alongside the elders' mediation role and customary chiefs' courts in South Sudan, people in rural communities access the services of these experts in resolving conflicts that have spiritual dimensions such as witchcraft, curses and oath-swearing. A respondent, for example, said "traditional and spiritual experts are very important. They inflict a curse on individuals for perceived wrong, undo curses cast by an enemy and administer oaths to uncover truth regarding matters of conflict" (KI 3: 27/2/16).⁷³ Similarly, Kariuki (2015: 5) argues that the respect, fear and reverence that these experts have in society, make them play a crucial role particularly in truth seeking, and they also mediate between the living, ancestors and God.

Conflicts arising from witchcraft are regarded as private matters and are not resolved by the customary courts but by the people involved and by spiritual leaders. The practice of swearing oaths for example, is a shared method of obtaining truth in South Sudan and most African societies. But in recent years, the Western-style use of the Bible by Christians and of the Quran by Muslims in formal courts for this purpose has become common and equal to more traditional methods (Leonardi et al. 2010). This is one-way modern religions have impacted on traditional spiritual

⁷³ Interview 3, with a Nuer youth: (27/2/2016)

practices even if the more rural communities prefer the traditional ones. Kariuki (2015: 5) observes that though governments in general since the colonial period have been suspicious of the authority of religious leaders and supernatural practitioners in Africa, they have recognised the power of the judicial sanctions they can provide, particularly in peacemaking.

Based on this assumption and as noted above, the customary chiefs' courts in South Sudan have incorporated some of these sanctions, particularly to uncover the truth through swearing of oaths. The curses of elders or spiritual leaders may have been partially undermined by colonialism, social change, mobility, urbanization, the influence of modern religions, and the influence of guns, but the power of the spiritual and supernatural in local society continues in most communities in South Sudan. It has huge effects on the decisions people make in seeking to resolve disputes. Leonardi et al. (2010: 23) argue that this is because in general people tend to associate courts with the danger of creating a permanent rift in social relations, which in turn risks the wrath of the ancestors, spirits, and divinity, or the potential use of harmful magic by an enemy.

Several examples across the African continent show how spiritual leaders and healers play a key role in healing and reconciling divided societies particularly when war ends. In Mozambique, for example, traditional healers played a crucial role in the reintegration of the ex-soldiers after the end of the Mozambican civil war in 1992. They conducted reception and reintegration rituals for former soldiers as a way of reconnecting to their former alienated communities in the post-civil war Mozambique (Igreja and Dias-Lambranca 2008: 67). Although the government and the people in Mozambique took a political decision not to employ modern transitional justice instruments such as prosecutions of perpetrators and truth commissions, they maintained their traditional practices and belief that the death of individuals through traumatic acts, or the breaking of taboos, such as the killing of human beings without metaphysical and/ or social legitimization, is an offence that requires immediate redress through atonement rituals. If wrong-doing is not acknowledged, the spirit of the innocent victim will return to the realm of the living to struggle for justice (Igreja

and Dias-Lambranca 2008: 68). Thus, they invoke the role of the institution of Madzoca⁷⁴ and the magamba⁷⁵ spirits to deal with their bitter past. Generally, traditional spiritual power and techniques have been invoked and employed at community level to deal with modern conflicts and the atrocities associated with them

Despite their key role in conflict resolution, traditional spiritual institutions and authorities have sometimes played the negative role of inciting and promoting conflict as their interpretations of incidents and events could be false but, nevertheless, believed in and taken seriously by those who felt themselves victims of the situations and who sought revenge on innocent suspects they considered enemies. Sometimes spiritual leaders also claim the spiritual powers and capability they do not have. For example, Howell (1954: 216) argued that there was a tendency among Nuer spiritual experts of the second category such as prophets, to assume a Leopard-Skin position, to conduct the ritual of homicide although they had no traditional right to do so. That any one of repute among them would claim that he possessed or was possessed by many different spirits, not just a single spirit. This suggests that spiritual leaders could be corrupted to misuse their supernatural gifts and powers for money or power. Spiritual institutions and leaders also discriminate against women. For example, Igreja and Dias-Lambranca (2008), observe that in

⁷⁴ Madzoca healers worked under the guidance of ancestral spirits. They were specialized in divination and would disclose health or social problem by disclosing all the invisible dimensions of the problem at hand and define an intervention strategy (Igreja and Dias-Lambranca, 2008:69-70)

⁷⁵ The magamba spirits established themselves as a local institution of healing activity alongside the existing ancestral madzoca healers. The common logic of operation of the two is revenge for an alleged unjust death. Magamba spirits can possess anyone in the war-affected area so long as the individual or his/her family has a history of abuse, abandonment, trauma and victimization through murder. Magamba spirits affected many victims after the Mozambican war and for these spirits to be dealt with successfully, the violence of the past cannot be ignored. There is a need to engage with the past, to find out what injustices were done, to acknowledge the wrong doing and to repair the damage. Magamba spirits bear witness in multiple forms to the violent events that occurred during the civil war (Igreja and Dias-Lambranca, 2008:69-70)

Mozambique, only the spirits of men killed during the civil war are allowed to return to the realm of the living to claim justice.

4.4 Typology and sources of traditional conflicts in South Sudan

The types and sources of conflicts in most cases determine the methods employed to resolve them. Most conflicts and their resolution methods in South Sudan and other traditional African societies were predominantly local. They ranged from family, clan and village, inter-communal and inter-tribal disputes. Occasionally, there were also land boundary disputes as kings and chiefs wanted to expand their territories and jurisdiction politically (Malan 1997). The main types and common sources of disputes in South Sudan have been socio-economic: mainly over grazing area, water sources and fishing ponds; blood feuds⁷⁶ as well as family and cultural disputes, especially due to intermarriages (Wassara 2007: 4). Similarly, Duany (2003: 209) confirms that intercommunity conflict generally occurs over grazing lands, water pools, fishing grounds and other shared natural resources. While some of the types and sources of discord were typical of pastoralist societies, others such as land and family disputes were cross-cutting and shared with most sedentary agriculturalist societies. The focus in this section is on inter-tribal disputes that have resulted in the loss of many lives. There will be a discussion in the following section of how they are settled, using customary law and traditional justice system.

Cattle herds are the main source of income and livelihood for the pastoralist communities of South Sudan: the Dinka, Nuer, Murle, Mundari, Toposa, Buya, Didinga, Jie and Kachipo among others. Among the tribes that occupy the Kidepo Valley in Eastern Equatoria State such as the Lango, Didinga, Dodos and Othuo, for example, the root cause of disputes was mostly revenge for an offence previously committed over cattle rustling or during fighting over grazing and water resource

⁷⁶ A long running bitter disagreement or fight that leads to loss of lives, often between social groups; families, clans and/or ethnic groups. It is common in South Sudan especially among pastoralists, because of organized cattle raids and fights over grazing land and water points.

areas (Brock-Utne 2001: 3). The lives of these communities depend on the cattle they own. Cattle define their livelihood as they can be sold in exchange for other commodities. As Brock-Utne (2001: 2) reported; with regard to these tribes, “a cow is payable as dowry in marriage negotiations or used in exchange of grain during hunger situations. Cattle are used as a source of milk, beef and cow dung mixed with mud is used for mud sliding the wall of the huts for shelter. Cattle are a highly regarded asset”.

Similarly, the livelihood and prestige of the Dinka and the Nuer depend on cattle. Cattle are cared for through seasonal movements in search of grazing land and water. This is the period when there is a concentration of people in the cattle camps in the lowland grazing grounds known as the *toich*. It is also a period when tensions build within and between herding communities. Concentration of cattle herders could also trigger cattle raids leading to inter-communal violence (Wassara 2007: 4). Water and its resources, mainly fish, have contributed to many intra- and inter- community conflicts among the different cattle-owning ethnic groups in South Sudan. Quarrels are associated with watering cattle and with fishing. Fishing is an important human activity of survival when cattle herders congregate in the lowland grazing areas along the banks of the Nile River and its tributaries. Ethnic groups or segments of ethnic groups own pools and ponds that contain fish. Trespassing these pools and ponds results in serious disputes that often lead to violence (Wassara 2007: 4).

This means that these tribes who have lived as neighbours or adjacent to each other have always been in conflicts of some sort; either when they meet during their seasonal movements in search of pasture and water; through planned raids to steal cattle from the other group or in attempts to reclaim their cattle supposedly stolen during previous raids. Either way, these confrontations often resulted in loss of life. As will be discussed in the next section of this chapter, these conflicts were always resolved by the relevant institutions described above and the prescribed solutions were always respected, binding and sustainable. However, the scale of loss in both human lives and property was not always as high and alarming as it is today, because of the use of primitive weapons such as spears, bows and arrows and strict

adherence to ethical warfare conduct, where vulnerable groups such as women, children the elderly, the sick, the wounded combatants and those who had surrendered were not always targeted.

4.4.1 New forms of conflict

The long-standing conflict in South Sudan over grazing lands, water sources, and cattle rustling amongst pastoralist communities have been exacerbated by the easy availability of small arms, militarization of civilian populations, displacement of local people, and the partial breakdown of traditional methods of conflict resolution. But these changes did not start with the civil wars that were fought during the last five decades. This started since the 1800s and followed different historical periods for example: when slave raiding and guns started to change local societies and militarize chiefs, through to 1900s-1930s, “pacification” of the British, when villages were bombed and guns given to chiefs, to post-colonial period under successive Sudanese regimes in the 1950s (Lesch 1998; Johnson 2003; Collins 2008; Johnson 2011).

The protracted civil war (1983-2005) has altered the nature of traditional disputes in South Sudan. The forced migration of people inside South Sudan and abroad and the prolonged separation of communities for a period of more than two decades have imposed sets of conflict-prone relationships. Clashes have become more complex in the aftermath of the CPA in 2005 and the independence of South Sudan in 2011. New conflicts have also emerged between returnees and host communities (Wassara 2007: 5).

Furthermore, Westernization has imported and intensified impersonal warfare; the more impersonal the conflict, the harder it is to employ traditional forms of reconciliation. As described by Myers and Shinn (2010: 5), villages burned by unknown assailants, persons killed by bombing from airplanes, and even death inflicted at the range of an automatic weapon are examples of impersonal conflict. The trajectory of a bullet lodged into the person’s body, is much more difficult to trace during major gun battles, as often a gun-fighter would not know for certain whether

or not he had killed someone (Hutchinson 2001: 315). The victim may never see the attacker and traditional leaders on both sides of the problems find it more difficult to reach an understanding in bringing this kind of mayhem to an end or of assessing blame and determining appropriate compensation. Moreover, the larger the scale of the conflict, the less opportunity there is for traditional efforts alone to succeed in ending the problem (Myers and Shinn 2010: 5).

South Sudan experienced this new kind of warfare for over two decades during the SPLM/A civil war. This reached its climax with the split within the SPLM/A in 1991, and recently with the eruption of hostilities in 2013. According to Hutchinson (2001: 314-5), the most crucial factor was the creation and introduction of new interpretations of war morality in Nuerland,⁷⁷ among the SPLA forces and the Nuer civilians. SPLA Commanders embarked on an ideological campaign among the SPLA forces, and convinced the local civilians as well that there were two kinds of war, and hence two kinds of homicide. Murders carried out in the name of the *koor kume* (government war) were entirely devoid of the social and spiritual risks associated with deaths caused by more localized *koor cieng* (homeland wars).

Homeland war was founded on the structural logic of feud (ibid). But as discussed above, for the feud to become effective, the personal identity of the original slayer must be known, to determine the relational boundaries of the specific individuals, families and spirits involved. Government war on the other hand, was declared entirely impersonal, secular and final; there was no possibility of claiming compensation cattle from a slayer's family, no need to purify the killer, and no reason to memorialize the death through special sacrificial offerings and posthumous marriages, Hutchinson (1996) in Hutchinson (2001: 315). The new interpretations of war morality may have been intended for war mobilization, but could have helped

⁷⁷ Hutchinson studied the Nuer. It is not clear whether this was only for the Nuer or a common experience that could be generalized.

dismantle traditional morality such as high regards for human life associated with Nuer culture and spirituality.

The handling of killings that occur as part of local fighting, raiding and warfare and their associated cycles of revenge has generally posed one of the greatest challenges to local justice in South Sudan from the colonial and post-colonial periods to recent times. The use of modern weaponry in recent years has further exacerbated the judicial challenge as it is extremely difficult to identify individual killers in a group conflict. This challenge however, is not unique to indigenous interventions as retributive justice mechanisms cannot both prosecute and conduct trials in situations of mass killings where individual killers cannot be identified. The case of the Rwandan genocide, for example, illustrates how backlogs of cases prompted the reintroduction of the traditional mechanism of '*Gacaca*' to expedite dealing with the cases (Waldorf 2010: 186).

4.5 Local Methods of Peacemaking in South Sudan

Traditional and local mechanisms of peacemaking are social constructs that are grounded on the world view, cultural values, norm and practices of a specific community or people. Mainly divided into agriculturalist and pastoralist communities, peacemaking in South Sudan is informed by their socio-economic and political arrangements. However, the methods are generally alike as they rotate around the concepts of mediation, compensation and restitution (to be dealt with later in this Chapter and in Chapter Five), with substantive difference only in the application of these principles from one community to the other (Wassara 2007: 11). Equally, similarities as well as differences exist in conflict resolution methods among different African traditional societies whose approaches are determined by traditions, circumstances and the personalities involved. Omeje (2008: 89), for example, argues that since pre-colonial times, negotiation, mediation, adjudication and reconciliation have been developed to different levels and practised in various African communities, where the practices usually involve the intervention of reputable elders, either on their own initiatives or by the invitation of a concerned third party or the disputants.

In South Sudan, as in most African countries, the format is the neighbourhood system or the 'palaver hut'. This is a method of local peacemaking where family, relatives and neighbours participate alongside parties to the conflict, witnesses and elders. These stakeholders participate in the efforts to amicably resolve the hostility by asking questions to conflict parties, witnesses and sometimes elders; give remarks and comments, sharing experiences or citing relevant examples from previous settlements, all of which are intended to contribute to solutions to the disagreement. Brock-Utne (2001), describes it as a traditional republican method of active dialogic settlement involving negotiation sometimes tempered with mediation and arbitration in which all parties in a conflict take part in deliberation until consensus is reached.

This approach relates to the heart of *Ubuntu* which is about the importance of interconnectedness and the promotion of harmony and peaceful coexistence. Brock-Utne (2001: 12) argues that the involvement of the community makes the transformation process participatory in the full sense as it involves more than just the inclusion of the parties and mediators. This further promotes a sense of belonging, which in turn, may contribute to the restoration, maintenance and building up of relationships. Generally, indigenous and traditional methods of conflict management and resolution in South Sudan are based on customary law. To provide a better understanding as to how these methods work, I first turn to conceptualize customary law in South Sudan.

4.6 Customary Law

The term "customary law" is generic. It is the entirety of the orally transmitted norms and values and practices that govern the everyday life of the community and that are legitimized through supra-human and supernatural institutions such as the spirits of the ancestors of the god(s), Chapman and Kagaha (2009) cited in (Boege 2011: 441). As applied to South Sudan and across some African countries, it refers to the body of traditions, mores, social conventions and rules that through long usage and widespread acceptance direct and govern traditional African society (Jok et al. 2004:

11). Customary law is the expression of the customs, beliefs and practices of the people of South Sudan.

Each of the different ethnic communities in South Sudan has its own long-developed strategies of conflict resolution. Equally, each different ethnic group has its own discrete body of customary law and, as noted above, there are thought to be over sixty such groups in South Sudan; which means there are more than sixty bodies of customary laws systems reflecting individual ethnic identities (Jok et al. 2004: 13). Custom is to the society what law is to the state. A valid custom must be of immemorial antiquity, certain, reasonable, obligatory and non-repugnant to statute law, though it may derogate from the common law; customary law is therefore as much social convention as a legal protocol (Jok et al. 2004: 11). A basic tenet in customary law is reconciliation, a vital tool in conflict resolution. Custom is a rule of conduct obligatory to those within its scope, established by long usage; a valid custom has the force of law (Jok et al. 2004: 11).

These bodies of customary law are both oral and written especially among the Nilotic tribes such as the Nuer, Dinka, Shilluk and Anuak. The body of customary law administered by Nuer tribunals established by colonial administration, for example, was coded to ensure standardization of the general principles. According to Howell (1954: 1), who published "*A Manual of Nuer Law*", the work sprang from one of the resolutions of the Nuer DCs' Meeting, later called the 'Nuer Chiefs' Council', a special body set up by the Governor of the Province in 1943 which enabled him to study and record the cases which appeared before the courts. It may be worth noting that colonial attempts to write down customary law then, tends to make the law less fluid.

Dengtiel (2000) in Jok et al. (2004: 13) divides customary laws in South Sudan into two generic categories: a central authority system which includes the Azande, Shilluk and Anyuak (ruled by Kings), and a decentralized authority system which includes the Dinka, Nuer, Acholi, Bari and Fertit tribes, among others. These systems typically represent ethnicities and sub-ethnic units where local individual chiefs and sub-chiefs or communities, normally of kinship networks, exercise core social and legal

powers. Customary law was the principal source of social order and stability within the region during the SPLM/A war. It remains the predominant source of law in contemporary South Sudan. Over 90 per cent of day-to-day criminal and civil cases are executed under customary law (Jok et al. 2004: 6). It has been recognized that four primary sources of custom exist: 'Practice', defined as a custom or tradition that has been repeated over many generations at the community rather than the individual level; a binding or persuasive decision from the court; not just customary but also "statutory courts" which are empowered to preside over customary law cases; religious beliefs, important in the treatment of matters like incest and adultery; "morality" and moral principles, Dengtiel (2000, cited in Jok et al, (2004: 12).

4.7 Mediation and Arbitration

Mediation based on customary law is the most commonly used local conflict resolution method in South Sudan. Where mediation is used, the mediators, mostly elders, are sought from within the community of the parties. A mediator may also voluntarily take the initiative or they may be requested by one of the two parties of the dispute to intervene (Gado 2013: 223). Mediators are people with status, wisdom, integrity and experience in the community and with a wide knowledge of customary law. Such a person or a group of people must be accepted by the parties to the conflict. If one or both parties see them not to be just and fair in the role, then it is unlikely the dispute will be resolved and the dissatisfied party may appeal to a mechanism such as the court of law. This means that the extent to which a mediator or mediators succeed depends on how they are perceived by the parties in conflict and how they carry out their role.

The mediators' roles include: pressurizing, manipulating, persuading, making recommendations, giving assessments, conveying suggestions on behalf of the party and so forth. They do these through clarifying information, promoting clear communication, interpreting standpoints, summarizing discussions, emphasizing relevant norms or rules, envisaging the situation if agreement is not reached, or repeating the agreements already attained (Brock-Utne 2001: 11). As there is no predetermined model, mediators change their roles from time to time as they deem

necessary to reach a peaceful conclusion and reconciliation. While these may serve the normative purpose aimed at peace, a greater focus tends to be on communal reconciliation which ignores the individual's rights to pursue the case if necessary until guilt is established and justice done.

Lack of fair trial where a perpetrator, for example, does not have access to legal representation by an advocate is a weakness of the traditional justice system according to the Universalist idea. However, the ample time given to a perpetrator and witnesses to argue their case, the participation of all the people with stakes in the case during the process who can pose questions and cross-examine the perpetrator and witnesses; and the consensus-based decision reached by elders, chiefs and the people could mean fairness which, of course, may not be understood or even accepted by the Western legal system. Alie (2008: 133) observes that justice here means seeking or establishing the truth, allowing each party an opportunity to express and defend itself, and so truth-telling is an integral part of the justice system in local societies.

Stakeholders in the mediation process are usually individuals, groups and ethnicities that are concerned with the issue of the dispute. Tribal leaders, elders and notable community personalities usually take part in the mediation process and dispute resolution gatherings on behalf of their ethnicities or respective groups. The social context of emerging disputes is very important and these are usually determined by circumstances such as a nuclear family or an extended family, immediate neighbours, a larger neighbourhood or different parties of a state. The mediators' focus is future-oriented, as they look forward to improved relations not only between the disputants but also among all those involved and so, instead of directing the question towards apportioning of blame, it is pointed towards a solution (Brock-Utne 2001: 9).

As noted above in this section, across many local communities in South Sudan and elsewhere in Africa, there exists the tradition of 'palaver hut' settlements of disputes. The dispute settlement is not necessarily in a 'hut' as the name suggests, but could, as the case may be take place in a community hall, village square or under the shade

of an expansive tree (Omeje 2008: 90). South Sudanese in general and the Dinka and the Nuer in particular often times conduct their deliberations under the shade of any big tree relatively located in the middle of the village to allow parties from nearby communities to participate. However, for deliberations that sometimes take the form of arbitration in chiefs' courts, they are either conducted under a shade or palaver-like huts constructed for that purpose, sometimes referred to as the chiefs' court.

The Kpelle people of Liberia of West Africa are known for their ad hoc local meetings called "moots" or "house palavers", where the conflicting parties arrive at mediated settlements through the use of experienced African leaders (Brock-Utne 2001: 9). The decision-making process is characterized by considerations of the social importance of conflict-solving, as social relations and internal solidarity are crucial. This resonates with the *Ubuntu* principle of interconnectedness and peaceful co-existence, where each party is expected to respond by a reciprocating concession from the other side to arrive at an amicable settlement. The agreement reached is shared with all parties including general community and affirmed as a social contract in a ritual way and this differs from society to society. This social perspective on conflict transformation has general advantages including shared understanding of the conflict. It also encourages harmony through active participation in the process by all parties (Brock-Utne 2001: 13).

The mediation method may be participatory and inclusive, but not devoid of challenges. They tend to be slow in bringing about agreement because they proceed based on consensus building; and some of these traditions have been drawn from patriarchal societies which can be exclusionary towards women (Murithi 2008: 16-7). This means there is a need to temper the progressive values that can be learned from these processes with the positive advances that have been made in promoting gender equality in peacemaking processes in Africa. Again, while traditional authorities can be a force for reconciliation, government manipulation of ethnic institutions and authorities has in many places weakened their local legitimacy and the role that they can play in mediation and peacemaking. As cautioned by Bradbury

et al. (2006: 13), one should therefore, avoid assumptions of the intrinsic nature of such social actors.

The negotiation and mediation process in South Sudan which applies to other African societies is not prescribed. However, Malan (1997: 30) argues it has constituent parts that are influenced by the social context. These constituent parts he contends, include: exploring the background of the parties in conflict; decision-making; consensus seeking; affirming an agreement; assisting with implementing an agreement, and a conclusion. The role of people with stakes in the conflicts, including the parties' constituencies, is crucial in driving the process to an amicable solution. As the talking proceeds, there is openness to feedback or influence from the social surroundings, which may lead to modifications of the perceptions or positions of the mediators or the parties involved.

Constituencies of the parties and the social groups present are respected (Brock-Utne 2001: 11). The process is flexible and dynamic as it tends to seek broader understanding of the issues and circumstances surrounding the conflict. Clan elders for example, manage and resolve conflict based on customary law, but elders do not have authoritative power to determine the outcome of a conflict. They represent the preferences of their clans (Duany 2003: 212). However, the role of opinion leaders and the council of elders is crucial for such meetings to bear fruit. When an elder from a family, village or clan becomes involved in the talks, the traditional objectives are to move away from accusations and counter accusations, to soothe hurt feelings and to reach a compromise that may help to improve future relationship (Brock-Utne 2001: 3). The talking usually covers all sorts of relevant background and explores the thoughts and intentions of the parties to the conflict.

Conflicts in South Sudan as across Africa should be viewed in their social contexts, and not as isolated events. Malan (1997) observes that while a Western mediator may begin the exploration by retracing the steps of the parties to the point of the initial conflict, an experienced African leader, considering the social realities, might start from a vantage point further back in time and try to create a framework of social reference. He might ask questions such as: who are you and where are you from?

Explain your family links; where did you grow up? This is to provide a broader understanding of the issues. The immediate aim is to mend the broken or damaged relationship, rectify wrongs and restore justice. Another aim is to ensure the full integration of the parties involved into their societies once again, and to adopt a mood of cooperation. Other long-term aims are based on building harmony in the community (Brock-Utne 2001: 9). Based on the African philosophy of common humanity, family ties and community networking in South Sudan are constantly respected, maintained and strengthened.

4.8 Arbitration

Apart from mediation, conflict resolution in most communities in South Sudan follows the indigenous justice system (arbitration), i.e. through the customary process in chiefs' courts. Elders usually discuss the issue to find a solution before it goes to the chiefs' court. When they fail then the issue is passed on until it reaches the chief. Some conflicts may be resolved before getting to the stage of arbitration or before reaching the chief's court. A conflict in the making, or which has just started can be prevented before it escalates, by a third party who offers to intervene as a mediator. Thus, mediation is also used for conflict prevention. Duany (2003: 210) observes that in South Sudan and in most African societies, the most important mechanism for preventing conflict is dialogue. Sometimes a case that is awaiting a hearing at the chief's court can be withdrawn for a settlement at home. The chief may of his own accord also refer a case to the elders or clan heads for a solution. Alternatively, a third party may plead to withdraw the case for settlement at home. The mediators accept responsibility to settle the dispute outside the traditional court and to report back to the chief.

Role of chiefs and Arbitrators

Chiefs are arbitrators who pass judgement on cases in local courts. But do traditional mechanisms include justice elements that punish the offence? Though this may bring us to the debate about what justice means, proponents of local justice mechanisms, interpret justice and punishment more broadly and holistically.

Western legal approaches are adversarial, confrontational and evidence must be direct and specific. The process emphasizes establishing guilt and executing retribution and punishment without reference to the victim or the wider families or future reincorporation of the offender into the community (Brock-Utne 2001: 3). Local justice systems tend to use other means of social control to discourage antisocial behaviour. In the traditional Acholi society, for example, shame, mockery, jeering and social rejection, together with compensation are adequate forms of punishment: where punishment consists of a feeling of remorse that compels the wrongdoer to ask for forgiveness and reconciliation (Wasonga 2009: 31). But the weakening of traditional institutions due to social change means that these sanctions are no longer as effective in fulfilling the roles they once did.

4.9 Local as Restorative Justice

Local mechanisms have generally been presented as restorative justice. This explains the reasons compensation and reconciliation are central to local conflict resolution. Peacemaking is construed as a communal process of rebuilding, of bringing justice into an unjust situation because lasting peace requires reconciliation (Duany 2003: 209). This is in line with the *Ubuntu* principle of interconnectedness and peaceful coexistence. The South Sudanese see conflict as a threat to people's relationships; and they see conflict resolution as restorative, leading to the re-establishment of social cohesion.

Based on the above description, do traditional justice mechanisms include punishment or retributive components? Where does this feature in local mechanisms across the ethnic groups of South Sudan? Several elements point to some kinds of punishment in South Sudan. The differing compensation among the Dinka and the Nuer, for example, in terms of number of cattle awarded for intentional as opposed to unintentional killings, as will be discussed in Chapter Five, would appear to be an example of some retributive aspects of local justice. Komakech (2012: 72) observes that while compensation was not seen as a means of punishment in local justice mechanisms, the motive and intention of the crime were considered in the amount to be rewarded. This suggests that there were at least some retributive aspects to it.

Many disputes might end in amicable settlement, confession of guilt and forgiveness, yet, there are instances in which both minor and heavy sanctions were applied in accordance with norms of the community concerned. Sanctions may range from restitution for rights and property to payment of death compensation and invocations of the wrath of the gods on the guilty and various forms of dishonour Khalil (2000:321, cited in Omeje (2008: 91).

Punishment is part of the sanctions. However, unlike the communal nature of much of its other elements, punishment is a largely individualized element of traditional justice, where the individual who committed an offence is, for example, caned and not the clan. It is these various forms of social control and means of deterrence that African and other non-Western societies use based on their world view of justice to deal with crimes that are not understood in the liberal Western world. It seems in the Western understanding, punishment is generally equated with criminal justice and in accordance with the rule of law. African societies interpret punishment more broadly. For example, as noted above, shame, mockery, ostracism and compensation are adequate forms of punishment. While shame and fear of supernatural powers are internal social controls, sanctions associated with actions taken by others in relation to behaviours that may be approved or disapproved are external controls.

Deterrence is the intended aim and primary focus of punishment. So, to entirely ignore the role of punishment in the practice of local justice would be an error. Is this another area of convergence between the local and the liberal international whose focus is that of trials and punishment to fight impunity and ensure the guarantee of non-repetition? The analysis and probable answer to this will be the focus of Chapter Six.

4.10 Nexus between Mediation, Compensation and reconciliation

Despite their variation from community to community and conflict to conflict, one aim remains consistently common to indigenous approaches, and that is the restoration of broken relationships to ensure peaceful co-existence. Generally, indigenous approaches emphasize and place a higher value on the link between mediation,

compensation and reconciliation rather than viewing them as separate and distinct processes (Murithi 2008: 28). This means that the different forms of accountability for offences committed, such as payment of blood price, fines, community service, apologies and so forth, are always based on the restorative justice procedures as opposed to Western legal approaches which tend to be more adversarial, retributive and based on punishment.

The aim of mediation and adjudication is therefore not to punish the wrong-doers, but to restore social harmony so that different communities and ethnic groups can live side by side. The ritual ceremony and the sharing of meals between conflict parties signify new relationships after people have cut contact with the event of a murder. Among the Acholi of Northern Uganda, for instance, which applies to the Acholi of South Sudan as well as to the Dinka and the Nuer, murder automatically breaks the relationship between the two clans, and the killer is not allowed to share in meals or take part in any other activities even within his own family or clan before ritual performances, otherwise a curse (*cen*) will bring down calamities upon the entire community (Wasonga 2009: 32). The restoration of a relationship through reconciliation rituals is in line with the *Ubuntu* principle. Myers and Shinn (2010: 3) confirm that traditional mechanisms are rooted in the culture and history of the African people which tends to see life in terms of relationships and peaceful coexistence which ought to be repaired if fractured by disputes. They emphasize group unity, reconciliation of individuals or groups, and peaceful reintegration into the community. Local techniques place the interest of the group upon that of the individual.

The payment of death compensation is widely practised among ethnic groups in South Sudan, especially pastoralist communities. Compensation and restitution are significant in the efforts to repair damage caused to lives, property and relationships. The colonial administration recognized customary payment of blood-money as an essentially local system common to most people in the Sudan and particularly

among the Arabs of the north, known as *dia*⁷⁸ (blood-money) (SAD 72/6/67).⁷⁹ The payment of cattle for compensation as will be discussed in Chapter Five, carries special significance among the pastoralists. However, Leonardi et al. (2010: 63), observe that the payment of blood money widely practised among the Northern Sudanese Muslims appears to have trickled into South Sudan; where for example the terms *puk* in Dinka and *dia* are used interchangeably, although the usage specifically means cattle.

This may not have come as a surprise for three reasons: first, the frequent cross-border interactions between the Dinka and their neighbouring Northern Arab and Muslim tribes may have contributed through intermarriages and death incidences among them; second, the Ngok Dinka of Abyei has been part of Northern Sudan since their transfer by colonial officials for administrative purposes in 1905; and third, the massive displacement and long stay of South Sudanese in the North since the inception of the SPLM/A war in 1983, may have led to adaptation of certain practices including payment of *dia*. The acceptance of the blood price payment in monetary terms by cattle-keeping communities such as Dinka and Nuer, when circumstances dictate, instead of cattle is yet another demonstration that cultural practice is a social construction; and a confirmation that what is considered traditional is not static but dynamic and can respond to influence of circumstances and other cultures. This flexibility therefore, means that local justice systems could be socially reconstructed and perhaps even be applied in dealing with gross human rights abuses in the aftermath of internal violent conflicts. This translates to a social constructionist understanding of reality and knowledge.

Not all the ethnic communities in South Sudan accept compensation that takes the form of money payment. Payment of blood money is feared in some areas as it conveys the risk that the blood of the deceased may accompany the payment and

⁷⁸ Dia is an Arabic word for blood price which is practiced among the Muslim communities in North Sudan

⁷⁹ Howell's DPhil thesis, "A comparative study of customary law among the cattle-owning tribes in the Southern Sudan". Part 2 "Dinka and Shilluk law". Howell, P.P. 1950; DUL, Special Collections GB 0033 SAD.

bring diseases and death to the recipients (Leonardi et al. 2010: 65). The Bari for example, an ethnic group in Central Equatoria state, often prefer cleansing ceremonies and rituals to payment of blood money. The Acholi people do not favour retribution, and often negotiate compensation and cleansing rituals and any restorative procedure outside the courts. In most cases both statutory and customary laws are applied where customary procedures aimed at reconciliation followed the formal court process. Contrary to the argument of Leonardi et al. (2010: 66), that such a process contravenes the criminal procedures requiring a punitive sentence, with the Acholi, the offender may even be sentenced yet traditional procedures may intervene as that is the only way to bring about communal reconciliation which cannot be achieved in the formal court of law. However, as observed by Leonardi et al. (2010: 65), some of the communities that have formerly opposed *dia* are now coming to favour it over other considerations such as death sentence.

The payment of compensation is not left to the offender and his family alone. The immediate relatives contribute towards the payment. The involvement of the offender's community in paying compensation demonstrates an acknowledgment of guilt, a sincere intention to reconcile and collective commitment to put an end to impunity and similar incidents from happening again. Referring to *Ubuntu*, Murithi (2006) observes that in Africa, a law-breaking individual transforms his or her group into a law-breaking group, and a feuding individual transforms his or her group into a feuding group: the essence of interconnectedness.

4.11 People-to-people peace process

A new local peacemaking model has been invented in South Sudan since the 1990s by the Church and traditional authorities: namely, the people-to-people peace process (PPP) which took the forms of peace meetings and conferences. This inclusive peace and reconciliation initiative which emerged during the height of the SPLM/A civil war in the 1990s was meant to address conflict among communities in the SPLA liberated areas; especially the impact of the 1991 split within the liberation movement on the local communities. The inter-communal fighting that followed the split took a toll on the local population. There was no government to intervene and

organize inter-ethnic meetings or enforce the law because, as the de facto government, the SPLA factions themselves were responsible for orchestrating the violence (Johnson 2014b: 5). Facilitated by the Church and backed by the SPLA, it drew on spiritual and moral authority, yet it was centred on indigenous mechanisms with the traditional authorities as the main actors. The process includes; trust building, storytelling, use of traditional peacebuilding techniques, reconciliation, symbolism and imagery (Ashworth 2014: 153). These are a kind of hybrid model in themselves that integrate three elements: traditional values, Gospel values and modern peacebuilding techniques, as seen in Wunlit (Redekop 2007; Ashworth 2014: 152), which I will shortly discuss.

Most of the respondents interviewed by this study (29 out of 43), referred to the success of PPP as a local initiative. The role of the Church has been highlighted as key to the success of the process. But the question is: How was it possible for the Church to work together with the traditional institutions with their ritualistic spiritual practices usually considered, especially by the Pentecostal Christians, as paganism? The answer lies in the African holistic view of life. *Ubuntu* philosophy involves a deep respect for all people's religious beliefs and practices. This respect opens a space in African thinking for a mix of practices in which reconciliation develops a fuller meaning than it does in most religions; not least in its respect for the other, without requiring conversion or assimilation (Nabudere 2004: 13). Many Africans believe in one God, while others believe in a variety of gods and spirits. This means *ubuntu* allows for religious diversity.

Although Christianity and Islam have influenced African spirituality, this has not done away with African traditional religious beliefs. The result is that many African Christians and Muslims today continue to practise African religion in what is normally called African Christianity, and Islam in Africa (Nabudere 2004: 13). As a demonstration of this pluralism of faiths, in South Sudan, it is not uncommon to find members of a family practising different religions or indeed syncretism; the simultaneous belief in different religions within one person or family: Christianity, Islam, traditional African religion or none; yet they respect each other's beliefs. They

converge when it comes to rituals that link them with their ancestors, make peace and promote family welfare and coexistence. This could have been the driving spirit behind the PPP process. Rather than seeing religions as competing, Africans are often able to overlap different belief systems, combining them into one (Nabudere 2004: 13).

Applied to make peace largely amongst the Nuer sections of Lou and Jikany in Akobo, Upper Nile Region in 1994; and in Wunlit between the Dinka of Bahr el Ghazal and Nuer of Western Upper Nile in 1999, PPP reduced inter-communal violence and allowed free movement and sharing of resources such as grazing areas and water (Bradbury et al 2006: 29). There have been numerous smaller peace conferences that followed the approach such as the one conducted in 1995 in Ikotos, the Eastern part of Equatoria Region (Duany 2003: 205). But because they focused on the Nuer and the Dinka, the Akobo and the Wunlit Peace and Reconciliation Conferences are of special relevance to this study. I now turn to briefly discuss them.

4.11.1 Akobo conference, 1994.

The 1994 Akobo peace and reconciliation conference was held to address the conflict which erupted between the Lou and the Jikany clans of the Nuer ethnic group in early 1990s. The conflict was caused in part by competition over the limited grazing area for livestock (Duany 2003: 17). It was attended by elders, religious leaders, young men, women and Nuer intellectuals. When asked to comment on the nature of the conference, a Nuer youth said; “I was in Akobo though young at the time. It was unusual for youth and women to attend such a high-profile traditional meeting, but it happened. I think everybody was happy not so much for the peace, but for participating and being represented” (KI 3: 27/2/16).⁸⁰ One common objective was at the centre of the conference: to restore broken relationships and bring about the process of healing among their people.

⁸⁰ Interview 3, with a Nuer youth: (27/2/2016)

The conference was flexible. At times, there would be “court sessions” woven into the conference, when individuals or groups would face the community and defend themselves against accusations levelled against them (Bradbury et al 2006: 32). It was open-ended, time was not an issue. What mattered was disclosing the truth according to Nuer philosophy and religion, the only way to bring reconciliation and healing (Myers and Shinn 2010). This means the conference typically followed a traditional format where time was not considered a major constraint. To create an atmosphere conducive to dialogue, stories, songs and proverbs were used. When the elders felt that the whole truth had emerged, they then prepared for the sealing of the peace agreement. Ten Lou and twelve Jikany chiefs signed the agreement; the sacrifice of two white bulls sealed the covenant (Duany 2003: 17). The results were that since then, there have been no war between Lou and Jikanyi. It also provided an example that was followed in the Wunlit peace conference discussed below. However, a common weakness with the PPP has been the problem of disseminating the agreements’ resolutions to communities and serious follow-up on implementation, which sometimes provides leeway to spoilers.

4.11.2 Wunlit conference, 1999.

The 1999 Wunlit peace conference between the Dinka of Bahr el Ghazal and the Nuer of the Upper Nile was held to resolve the conflict that erupted following the split in the SPLM/A in 1991 (Bradbury et al 2006: 29). Severe inter-factional fighting took place between the Torit group of John Garang, a Dinka and the Nasir camp of Riek Machar, a Nuer after the split. Efforts to reconcile principals of the factional groups had failed while the fighting was conducted along ethnic lines. Johnson (2014b: 5) observes that prior to 1991, the border region between the Dinka of Bahr el Ghzal and the Nuer of the Upper Nile had been reasonably stable and peaceful, but after 1991 both factions of the SPLA mobilized civilian forces in the region against each other, the main target being the main civilian population base of the opposing side. The Wunlit conference was organized by the New Sudan Council of Churches (NSCC), and the traditional authorities between February and March 1999. It brought a negotiated end to extended hostilities between the rival groups, which had endured

until that time (Bradbury et al 2006: 15). The Wunlit conference has been one of most cited by scholars as a successful local peace initiative in South Sudan.

The success of the Wunlit peace conference was due to the long preparation for it. The preliminary meeting of chiefs from both communities in Lokichokio, Kenya and their exchange visits to each other's territory helped build trust and convinced others that the process was genuine and peace between the two communities was possible (Johnson 2014b: 5) It seems that what is lacking in modern peace processes is the kind of preparation found in indigenous approaches which involve transparency, the participation of the grassroots population at local level and ownership by the people prior to actual negotiations. However, these preparations and the entire conference were possible because of the logistical support of the UN base at Lokichokio where the chiefs first met, and the financial help from other NGOs and friends of the NSCC (Johnson 2014b). Is this a demonstration of the possibility of hybrid approaches to peacebuilding in South Sudan? I will focus on this question in Chapter Six.

Perhaps one of the major weaknesses of the PPP is its dependency on the government (then SPLA) and the international community's support for the implementation of resolutions which were; the establishment of community police groups, with radios for communication; request for humanitarian aid such as the provision of water points, shelter, schools and clinics to returning IDPs. Provision of food to help them settle in, as well as for host communities who shared what they had with the returnees. Seeds and tools were also needed to break the cycle of dependency on relief food (Ashworth 2014: 158). The government's role is very important not only in guaranteeing security and facilitating the process, but also in its implementation. Johnson (2014b: 7) observes that where the government is absent or lax in its responsibilities, full implementation even of a popular agreement is impossible.

Again, lack of logistical and financial support could jeopardize local efforts at peacemaking based on the PPP model. Thus, the participation of external agencies whether the Churches, international and national NGOs as well as international governmental agencies is important in this model of peacemaking (Johnson 2014b:

9). The failure of the international community to support the implementation of the Wunlit resolutions meant that most of the resolutions remained in papers. The question raised by this scenario is whether such complementarity does not lead to clashes of interests and goals between indigenous restorative justice and modern retributive justice regarding dealing with atrocity crimes; and the thorny issue of power relations between the local and the international.

The lack of commitment by the international community, despite initially supporting the process, to fund the implementation phase of Wunlit resolutions seems to confirm the allegation that international bodies as agencies of the liberal peace approaches want things done their own way. According to Ashworth (2014: 158), the international community is always happy to support the high-profile peace conferences, but always had excuses to avoid supporting the low-visibility follow-up. The challenges faced in the Wunlit resolutions' implementation was because the international NGOs and donors seemed focused on their own narrow programmes and plans and were unable to recognize something of national strategic importance. However, of significance to this study is the potential and possibility of hybrid approaches to peacebuilding of the indigenous and the modern.

4.12 Gender and local peacemaking

Gender role in traditional peacemaking has been a subject of concern considering how conflicts affect men and women differently and gender being at the heart of such a disparity. Most ethnic communities in South Sudan are clearly patriarchal. More than half of the respondents (27 out of 43) interviewed for this study said women's role is relegated to the background. This means patriarchal cultures have also influenced legal systems, with the result that governance structures have tended to uphold the inferior status of women. A female respondent lamented. "They only need us to provide services during ritual ceremonies and to sing, dance and celebrate the peace they have concluded without us" (KI 5: 20/2/16).⁸¹ Usually mediators and

⁸¹ Interview 5, with a Dinka woman: (20/2/ 2016)

chiefs are men; women are neither selected as mediators nor made chiefs, and do not participate in the mediation process. But most of the time they participate as witnesses, observers or service providers during ritual performances and directly only if they are a party to the case.

A body of literature seems to show this scenario as a cross-cutting issue in the African continent. In Burundi women are not allowed to become members of the *Ubushingantahe*,⁸² they can participate in the proceedings as the wife or a widow of a member (Allen and Macdonald 2013: 13). Gado (2013: 231) recounts that in Darfur, if women are involved as a party to conflict or as witnesses, they join the meeting but usually sit in the back seats (or floor mats) and separately from the men. Women always sit behind the men and are sometimes assigned a special place behind a screen to separate them from men, so only their voices can be heard. When a woman is part of the *Judiyya*⁸³ as a witness, sometimes, she is not permitted to attend the whole session. In such a case, she is only allowed to provide her testimony when such a point is reached in the discussions and then she will be asked to leave.

This practice undermines whatever potential may be there to apply local initiatives and the *Ubuntu* principles in resolving modern conflicts in a complimentary manner to international mechanisms promoting human rights and equality of treatment. But is this unique to Africa? In all parts of the world, there are many practices like patriarchy that have promoted exclusionary conditions for women; which is also evident in Europe, North America, Asia and Latin America. Murithi, (2008: 26) argues that in any cultural framework, you will find challenges in terms of the way it is conceived historically. The extent to which women are included or excluded differs largely from one society to the other. It would therefore, be misleading to simply

⁸² A council of elders in Burundi that settle inter-personal, community and other disputes. These include marital, family and land disputes among others.

⁸³ A local conflict resolution method based on customary law in Darfur

identify traditional societal structures with patriarchy and subordinate positions for women and liberal Western society with gender equality (Boege 2011: 447). This is not to downplay the understanding that in general the societal spheres of men and women are more clearly separated in traditional societies than in western liberal societies. The objective is thus, to extract the most progressive principles of African peacebuilding and combine them with other progressive ideas of gender rights and gender inclusivity. A respondent said, “although that may alter the so-called authentic nature of those cultural practices, I think in the 21st century we cannot try to replicate cultural processes that have previously been affected and distorted by colonialism and modern nation states in Africa” (KI 42: 2/12/16)⁸⁴.

Over the years there have been changes in some traditional structures; some communities in South Sudan have allowed for the involvement of women and informed youth in local and traditional peacemaking roles. For example, among the Lopit⁸⁵ community in Eastern Equatoria state, there is a female chief.⁸⁶ There are similar experiences across African countries. Manning (2009: 17), for example, observes the role of a female paramount chief in Sierra Leone. This means that native and traditional institutions of peacemaking are both changing. With space for women’s participation widening with greater numbers elected as members of parliament, some serving as ministers, doctors, lawyers, academics, officers in the

⁸⁴ Interview 42, with Tim Murithi: (2/12/2016)

⁸⁵Chief Madalina Tito Ohirong Ohire of Lopit tribe in Lopa County of Eastern Equatoria became chief during the years of war. She was among the sixteen South Sudanese and Nuba Mountains traditional leaders who went on historic tour to South Africa, Botswana and Ghana in August 2006 <http://sudaneseonline.com/cgi-bin/sdb/2bb.cgi?seq=msg&board=60&msg=1156150361&rn=0> (Accessed on 23/10/2017)

⁸⁶ It seems female chiefs existed in some communities much earlier. For example, Latuka rain queens, female negotiators in 19th century account among others.

police and army among others, it seems more women will become chiefs and others will play a direct role in the council of elders as mediators. Women seem to find most of these empowerment and capacity-building opportunities through the Church and NGOs, both local and international, operating in local communities.

With the growth of democracy on the continent in recent years, some timely progress seems to have been made involving affirmative action policies in some countries regarding women's inclusion and participation at all levels of government. A case in point is South Sudan where 25 per cent of posts are supposed to be held by women and enshrined in both the national and state constitutions (Transitional National and State Constitutions of the Republic of South Sudan, 2011). For a country like South Sudan just emerging from devastating war, with a miserable rate of female literacy, to take such a positive step, clearly means that gender-sensitive strategies for restoring the human dignity of all members of society is being adopted with added seriousness and urgency as well as challenging the social norms that try to enforce the subservience of women to men.

Several women who participated in this study however, consider the transformation as too slow and as sometimes being frustrated by officials at the highest level of state governance. A female respondent in Juba said, "women are being let down by the executive arm of the national government. The president and his ministers do not follow the constitutional provision on women's representation" (KI 24: 2/3/2016).⁸⁷ Although an affirmative action policy, giving 25 per cent of female participation in all positions of public service is enshrined in the transitional constitution of South Sudan, on many occasions, the President of the Republic has made appointments of cabinets without a single woman. This situation is being replicated at lower levels of government, such as states and counties, which means that, despite promulgated legislation on gender inclusion, it remains at policy level; so, in practice, it has yet to take root. This could be due to the influence of patriarchy.

⁸⁷ Interview 24, with a state member of parliament: (2/3/ 2016)

Thus, empirical evidence contradicts the principle of *Ubuntu* in South Sudan with its claim of common humanity, justice, equality and peaceful coexistence.

But the fact that these inequalities exist does not mean that local approaches to peacebuilding have nothing to teach us. Many of these strategies offer progressive value systems for maintaining social relationships and promoting harmonious coexistence which can provide insights that can contribute to peacebuilding in Africa. These values are at the heart of *Ubuntu* philosophy. Notwithstanding these challenges and unlike in the past years when women only played the role of rendering services during ritual performances, in the 1990s, particularly after the split in the SPLM/A, South Sudanese women directly participated in local peace processes. According to Duany (2003: 17-8), during the 1994 Akobo peace conference, Nuer women served as effective witnesses and acted as an informal truth commission during the open deliberations presided over by the chiefs. They shouted down any men whose testimony contained false statements and threatened to reveal what they knew. She emphasized that the shame of their response caused several men to revise their testimony so as not to be branded as liars.

Perhaps the most important women's local contribution to peace in South Sudan is the alliance of clans through intermarriage. One respondent reported that during a land boundary conflict between the Acholi and the Madi in Magwi County, Eastern Equatoria state in 2011, women from both communities married on either side communicated plans of attacks and urged their clans of origin to make peace before the conflict escalated further as the loss would be great (KI 27: 7/3/16).⁸⁸ In such a situation, Duany (2003: 12) argues that women become community resources, providing information across clan lines that can lead to dialogue, and this can keep broader intercommunity relations positive.

During the war years, several local women's organizations, such as the Sudanese Women's Voice for Peace (SWVP), the South Sudanese Women's Association

⁸⁸ Interview 27, with a South Sudanese intellectual: 7/3/2016

(SSWA) and the Sudanese Women's Association in Nairobi (SWAN) were established and have been active in grassroots peace work. Among others, their activities have included networking and several peace activities from women's perspectives, entailing the creation of mutual bonds between women in the communities and various traditional institutions in South Sudan. These ranged from peacebuilding training especially for women, creating peace demonstration centres in villages, and supporting small-scale local development projects (Duany 2003: 216). These women associations were also engaged in advocacy with the SPLM/A military and political leaders and other stakeholders at regional and international levels; awareness raising and capacity-building for female community leaders at the grassroots on conflict resolution and peacebuilding; campaigns to ban landmines and prevent spread of HIV in collaboration with the local churches; promotion of reconciliation and respect for human rights within the Sudanese refugee camps in Kenya, aimed to contribute to the political empowerment of Sudanese women (Duany 2003: 216). These women's organizations were local, but were organized on the model of modern civil society. They collaborated with and solicited funding from several international organizations. Their partnership demonstrates that hybrid approaches to peacebuilding interventions in South Sudan is possible.

With the signing of the CPA, these local women's organizations either became completely dormant or died. A former member of the SWVP interviewed for this study said "the CPA came with lots of opportunities for members of these organizations, most of them got absorbed into different government ministries and commissions and got lost there. Some of them even left with, and still keep, the Associations' files as there was no handing over ceremonies" (KI 40: 15/6/16).⁸⁹ Another respondent said, "This is our main weakness as local civil society, when opportunities come our way we tend to forget our goal, vision and objectives until the moment when things go bad again" (KI 6: 4/2/16).⁹⁰ It seems many women who were members of these

⁸⁹ Interview 40, with a civil society activist: (15/6/2016)

⁹⁰ Interview 6, with a civil society member: (4/2/ 2016)

associations and other members of civil society active during the war joined the government and/or NGOs and did not look back to support the sustainability of the associations they once worked hard to establish. Is it fair then to claim that the stable local civil societies most neglected by development partners and donors are the local institutions and authorities? The answer is often 'yes'; they are ever present and mostly represent communities at the grassroots level irrespective of changing circumstances.

4.13 Conclusion

This chapter has attempted to understand the cultural institutions and peacemaking mechanisms in South Sudan at a general level, covering different historical periods. The role of women, and new models of local peacemaking such as the PPP, have also been discussed. The chapter examined how these institutions and mechanisms have changed over time due to contacts with other cultures. The key factors of change have been colonialism, modernization, evangelism and the impact of civil wars. Despite the extent of these changes, however, evidence shows that these institutions and mechanisms are still widely used in South Sudan. The next chapter takes these discussions into conceptually and empirically narrow environment.

Chapter Five:

Dinka and Nuer Post-Conflict Justice and Reconciliation Mechanisms

5.0 Introduction

This chapter focuses on Dinka and Nuer justice and reconciliation mechanisms as practiced in the aftermath of violent conflict during colonial (1890s-1950s) and post-colonial periods 1950s to date. It examines the concepts of justice, peace and reconciliation among the Dinka and the Nuer of South Sudan.⁹¹ It draws on empirical data from research interviews, combined with secondary social and historical research to discuss the strengths, weaknesses, challenges and opportunities regarding these mechanisms and their roles in resolving conflict and building peace. The chapter argues that these techniques have always worked within the overall socio-economic and political context of Dinka and Nuer ethnic systems, including institutions and structures that are derived from the communities' own customs and values known as customary law. It is worth noting from the outset that Dinka and Nuer local methods are holistic and serve as conflict resolution, reconciliation and justice mechanisms.

The chapter is divided into four sections. Section one explores the concept of justice among Dinka and Nuer communities, and how justice mechanisms are used in

⁹¹ A specific reference is made to the Dinka and the Nuer of South Sudan because Dinka and Nuer ethnicities are also found in Sudan (Dinka) and Ethiopia (Nuer). The Ngok Dinka tribes of Abyei are still legally regarded nationals of Sudan as per the 1905 colonial administrative Act which transferred Abyei to the North. Despite the CPA's provision for Abyei concurrent referendum with that of South Sudan in 2011, to decide whether they want to remain part of Sudan or become part of South Sudan should it secede; an official referendum has not yet been conducted. The oil-rich area remains contested by Sudan and South Sudan as attempts for a joint interim administration since 2005 has not worked. Although Abyei area was covered in this study, most participants were interviewed in Agok town of the Greater Bahr el Ghazal where most of the Abyei population had taken refuge in 2011 during the armed conflict between Sudan and South Sudan in Abyei.

practice as conflict resolution tools; section two discusses Dinka and Nuer customary law, institutions and conflict resolution practices; section three reviews Dinka and Nuer reconciliation and re-integration methods; and section four discusses the role of Dinka and Nuer women in peacemaking.

5.1 Aims, Types and Scope of Justice

It is important to examine the aims, types and scope of concepts of justice among Dinka and Nuer communities before any attempt to discuss their meaning and significance both in the past and at present. The idea of justice among Nuer and Dinka communities is the aim to achieve social order, stability, reconciliation, and peaceful coexistence; and sometimes these qualities are implied in the usage of the concept (KI 2: 23/1/16).⁹² This is expressive of the philosophy of *Ubuntu*, which lies in the recognition that a healthy community at peace with itself can only be built if the human dignity of all its members is safeguarded (Murithi 2005: 342). Great significance is attached to justice in both societies. Referring to justice in the Nuer ethnic group, for example, one respondent said; “without justice, there will be no harmony and people cannot live together”⁹³ (KI 2: 23/1/16). “Justice leads to reconciliation and peace which cannot be achieved without accountability” (KI 2: 23/2/16).⁹⁴

Unlike the liberal Western understanding of justice with diverse types and meanings; retributive, restorative, reparative, redistributive and the like – justice in the Nuer and Dinka languages is holistic and means only one thing: the basis of social order which applies to different spheres of life. Here we see how reference is made to *Ubuntu*: that of social order and peaceful coexistence. But this is equally relevant to the concept of conventional human rights as discussed in Chapter Two, which is common to both the liberal peace theory for maintaining international peace and

⁹² Interview 2, with a Nuer chief: (23/1/ 2016)

⁹³ Interview 2, with a Nuer chief: (23/1/ 2016)

⁹⁴ Interview 2, with a Nuer chief: (23/1/ 2016)

security and to the African philosophy of peace, that of common humanity and peaceful coexistence. Is this then one area of convergence between the two approaches? I shall come to this question in Chapter Six where divergences and convergences will be discussed.

In terms of scope, the concept of justice among Nuer and Dinka communities permeates all spheres of life and extends beyond the living to include those who have died. The dead are still accorded their rights among the living. As discussed in chapter four, traditionally, for most Africans death does not mean the disappearance of the dead; the dead are rather understood to continue in a spirit form and as such are recognized as the 'living dead' or ancestors (Nabudere 2004: 12). It seems the widespread practice of posthumous marriage among the Dinka and the Nuer is based on this notion of justice that include the realm of the dead. In both ethnic groups, if a person dies before marrying, the living (family and relatives) have the obligation to marry for him a wife or wives and they are expected to raise the children in the name of the deceased to restore the lost procreative power (Hutchinson 2001; Leonardi et al. 2010). One respondent stated: "there is no way a dead member of the family can be forgotten. He may not be physically present, but he is alive in spirit, his brothers and uncles must keep his line alive by marrying for him and producing children in his name" (KI 3: 27/2/16).⁹⁵ Despite assuming the procreative role with her, whoever is assigned that responsibility in Dinka and Nuer community must know that the woman is not his wife and the children raised will not be identified as his but as those of the deceased person. This is considered justice because Nuer and Dinka believe that if the dead are not served among the living, their anger will bring misfortune and *cien* (a curse) to the family because of that injustice.⁹⁶ This means, as the individual is related to the community, so too is the present age linked to the past and to the future (Nabudere 2004: 12).

⁹⁵ Interview 3, with a Nuer youth: (27/2/2016)

⁹⁶ Interview 2, with a Nuer chief: (23/1/2016)

The scope of justice among Dinka and Nuer communities as described above is so wide that its meaning can only be understood from the contexts to which the word is applied. My focus here is to understand its use as applied to cases of homicide and war-related crimes. I now turn to a comparative discussion of the concept of justice itself as conceived by each of the two ethnic groups and how it is applied in practice through adjudication and/or mediation as a method of conflict resolution. A caveat is added to account for the challenges involved in defining such a wide, rich, and complex concept as justice which has its origins in a philosophical worldview different from global narratives. In his book *No future without forgiveness*, Desmond Tutu (1999: 35) observes regarding *Ubuntu* that it is very difficult to render its definition into a Western language. This may also be the case here, where translations may fail to capture some of the nuances.

5.2 Concept and practices of Justice among Nuer the Dinka

5.2.1 Concept of Justice among the Nuer

Among the Nuer, *cuong* (justice) could also be translated as “rights” which must always be respected or else instability would ensue that would disrupt the social order. Justice means fulfilling one’s obligations, and granting someone’s rights that accrue from relationships and membership in a family, extended family and community (KI 1: 20/1/16).⁹⁷ A just arbiter is one who administers justice without favour even in a case that involves his own family or that of a stranger. Justice also means ‘equality’, which resonates with the Nuer belief that people are all equal and that nobody is less than another; being educated or not, rich or poor, young or old, Nuer or foreigner does not matter; this is one reason why the Nuers call themselves *Naath* which translates as “humans” (KI 2: 23/1/16).⁹⁸ The history of the Nuer expansion and assimilation of people from different ethnic groups including the Dinka (Howell 1954), is a demonstration of this claim. A Nuer respondent said “Nuers value

⁹⁷ Interview 1, with a Lawyer: (20/1/2016)

⁹⁸ Interview 2, with a Nuer chief: (23/1/2016)

human beings and see humanity as one; they don't believe in division and segregation" (KI 2: 23/1/16).⁹⁹ Strangers in Nuer society are married to royal and important families to remove inferiority and integrate them. One informant said, "A young man, for example, is given a beautiful girl from the daughters of Nuer leaders or a young woman married to one of the sons of these leaders where they become members of royal families" (KI 2: 23/1/16).¹⁰⁰ They are indigenized to the Nuer community and calling them strangers after that can bring war as that is considered an affront to the person to whom they are related. In that way strangers become Nuers with full rights and obligations. The informant concluded "this is the reason most of the Nuers cannot claim originality because we come from all the tribes of South Sudan" (KI 2: 23/1/16).¹⁰¹

Howell (1954: 7) confirmed that the Nuer called themselves *Naath* which simply means "people"; "*nok nei te Naath*" translated as "we are the people". However, contrary to the above explanation he argued that the expression was descriptive enough of Nuers' purposes and revealed their arrogant belief in their own superiority over other human beings. The Nuers tend to see themselves as superior compared to their Dinka neighbors, for example, in terms of their bravery and fighting skills (KI 2: 23/1/16).¹⁰² This suggests that Nuers believe all Nuers including those assimilated are equal but outsiders are not. However, justice in Nuer also means "sharing". People must share whatever is available and one of the requirements for becoming a leader in Nuer society is generosity. Selfishness is considered equivalent to injustice (KI 2: 23/1/16).¹⁰³

As such, issues of justice permeate every aspect of Nuer life. Polygamy, for example, is a widespread practice, where a Nuer man can marry as many wives as

⁹⁹ Interview 2, with a Nuer chief: (23/1/2016)

¹⁰⁰ Interview 2, with a Nuer chief: (23/1/2016)

¹⁰¹ Interview 2, with a Nuer chief: (23/1/2016)

¹⁰² Interview 2, with a Nuer chief: (23/1/2016)

¹⁰³ Interview 2, with a Nuer chief: (23/1/2016)

his wealth (cattle) will allow. When he is married to three wives, for instance, he cannot pay bride wealth for the young wife before he has paid for the older ones, which is considered justice. Again, this applies to treatment of children in a family. The first-born male from the first wife had rights to marry first with entitlements including inheritance. The first herd of cattle is given to him, followed by the eldest son of the second wife up to the third. “You cannot marry two wives to the first son before his brothers from the same mother or different mothers marry their first wife. That is injustice” (KI 2: 23/1/16).¹⁰⁴ As illustrated and elaborated through the above example, in this context, justice means equality of treatment, and in that case the concept and practice conform to the principle of *Ubuntu* which promotes equal treatment and peaceful co-existence because of common humanity and interconnectedness.

Regarding conflict resolution, justice equates with compensation; for example, payment of blood price in the case of homicide to restore the loss. “When a victim’s life is compensated and reconciliation rituals performed, then there is already peace among individuals, families and communities; nobody is allowed after compensation to kill in revenge” (KI 2: 23/1/16).¹⁰⁵ Post-conflict justice among the Nuer, then, means repairing the damage, restoration or paying back what was lost, such as life, reputation and property. The biggest question concerns whether a lost life can be repaired or restored to what it was before. As will be discussed under compensation in the following section, it is about the payment of cattle that is used to marry a wife for the living dead and raise children in his name and keeping his life for posterity. This resonates with the cultural significance observed by Leonardi et al. (2010: 65), which suggests that the practice points to restoring the loss of procreative power of the dead person.

Interestingly, justice also means “revenge” and revenge means justice. One informant said, “uncompensated damages, especially loss of life resulting from

¹⁰⁴ Interview 2, with a Nuer chief: (23/1/2016)

¹⁰⁵ Interview 2, with a Nuer chief: (23/1/2016)

homicide, means that all those on the perpetrator's side are guilty and should be punished to the same degree or more" (KI 2: 23/1/16).¹⁰⁶ Revenge in Dinka and Nuer culture tends to be an instinctive reaction to homicide or raids. It is also the case when justice is delayed and people have lost patience. During the South Sudan's decades of civil war which also pitted communities against one another, this understanding of justice largely characterized intra-Nuer conflict relationships as well as inter-ethnic relationships with their neighbouring ethnic groups such as the Dinka and the Murle. Cycles of revenge have often been part of their conflict relationships (Johnson 2016b). But this is not completely hopeless, a respondent added: "they do have this mechanism where the revenge cycle must stop somewhere and the peace process takes over. But they have largely lost these positive features in the last two decades of war and they are now stuck with the notion of revenge" (KI 25: 27/2/16).¹⁰⁷ This is one area civil war has contributed to the weakening of traditional institutions and the erosion of traditional values in South Sudan.

But justice also means "amnesty". As discussed in chapter four, this was the case during the 1999 Wunlit peace conference, a participant recalled where, after both sides aired their grievances during a truth-telling session, some of the chiefs declared, "fine, we are prepared to forfeit the right to cattle for what took place before; let us start a new page, but if anybody kills from today onwards, we will demand cows from him" (KI 25: 27/2/16).¹⁰⁸ Similarly, the Akobo intra-Nuer peace conference of 1994 also ended with an amnesty as a mechanism to deal with human rights abuses and atrocities committed during the conflict between the Lou and the Jikany Nuer regions (Bradbury et al 2006: 36). Amnesty can be a vital local peacemaking tool to bring about peace and reconciliation. However, as I will discuss in Chapter Six, based on the universalist notion, certain crimes such as genocide, war crimes and crimes against humanity, when committed, cannot be amnestied.

¹⁰⁶ Interview 2, with a Nuer chief: (23/1/2016)

¹⁰⁷ Interview 25, with a peacebuilding practitioner: (25/2/2016)

¹⁰⁸ Interview 25, with a peacebuilding practitioner: (27/2/2016)

5.2.2 Concepts of Justice among the Dinka

Justice among the Dinka means “fairness”, “equal treatment”, “sharing” and “compensation”. The translation is *kenyiec* (justice), used in the context of homicide. Justice is also translated as “*boko nyimthong*” (equality). One participant said, “equal treatment of children in a family by parents, fairness by chiefs in arbitration and in mediation by elders in dispute resolution constitute justice” (KI 29:19/2/16).¹⁰⁹ This means that people are equal and no one is above or below another so that no one can manipulate another and no one should suffer violations, especially the weak. Justice also means “sharing”. “One cannot, for example, carry on eating in a Dinka community when a hungry person is sitting nearby or have too much of something when others have none” (KI 9: 7/2/16).¹¹⁰ This notion of justice resonates with the *ubuntu* principle where promotion of the welfare of the community members underpins the value of common humanity and interconnectedness. Sharing shows justice, which also means distribution of wealth, so that others also benefit from it to promotes collective welfare.

The idea of wealth distribution as justice is vital among the Dinka and constitutes a very important part of their customary law; especially the distribution of bride wealth during marriage. One respondent reported, “the bride wealth or dowry that comes from a daughter’s marriage is shared out amongst relations and friends and is not for the father alone” (KI 9: 7/2/16).¹¹¹ Marriage, among the Dinka, as among other Nilotic and African ethnicities, is not an individual affair, but a union between two kinship groups, and this is the case when it comes to the conventions of bride wealth distribution. Certain categories of relatives of the bride must receive a recognized proportion before the marriage is considered binding (SAD 768/1/42).¹¹² With the

¹⁰⁹ Interview 29, with a Dinka woman: (19/2/2016)

¹¹⁰ Interview 9, with a Dinka elder: (7/2/2016)

¹¹¹ Interview 9, with a Dinka elder: (7/2/2016)

¹¹² Miscellaneous notes on Dinka courts and customary law and on the distribution of bride wealth, Howell, P.P. 1948; DUL, Special Collections GB 0033 SAD.

distribution and redistribution of cattle come reciprocity which in most cases is taken as a right within a family and extended family. I observed during my field work among the Twic Dinka of Mayen Abun, how children of families without milk cows, for example, benefit from milk supplied through the distribution and redistribution of cattle. In that way, the broader and wider concept of justice among the Dinka translates into the promotion of rights and dignity for the poor and the weak in society. This aspect of distribution and redistribution is evocative of the *Ubuntu* principles of hospitality, generosity, reciprocity and collective welfare which lead to solidarity and peaceful coexistence: values at the heart of *Ubuntu*.

But Dinka and Nuer local procedures are unfair and unjust in many ways against women. Most Dinka and Nuer women participants in this study asserted that local justice practices run counter to what ought to be the case as discussed in the concept of justice. Women claim unfair treatment in Dinka culture, for example, that they do not share in family resources and benefits and often not consulted in family matters. They are not entitled to bride wealth paid in the marriages of their own daughters and sometimes some men use this marital wealth to marry more wives. One of them declared, “we have no inheritance right to family wealth such as cattle, land and other property” (KI 29: 19/2/16).¹¹³ This raises the question of how a peaceful society can be built where people live in harmony if a section or sections of the society (women and youth) feel alienated. Other examples include unequal education opportunities for boys and girls in a family where boys always receive preferential treatment. For example, in situations of limited resources the decision is always to educate boys, as girls are in waiting for marriage or could even be married off to sponsor the boy’s education (KI 29: 19/2/16).¹¹⁴ Women are also married off to their abusers such as rapists and abductors. For example, after the 1999 Wunlit peace

¹¹³ Interview 29, with a Dinka woman: (19/2/2016)

¹¹⁴ Interview 29, with a Dinka woman (19/2/2016)

conference, payment of dowry was required for those girls who had been taken by the soldiers as wives (Ashworth 2014: 159).

Conceptualized in these terms, justice among the Dinka as well as among the Nuer means equality in everything, including rights, services, and treatment without discriminating between men and women, girls and boys, or any other criteria such as level of education and age. But drawing from the participants' views, there are some contradictions in practice and therefore, gender bias and injustice in both Dinka and Nuer cultures. It also suggests that the practice is in contradiction to the *Ubuntu* values of common humanity, respect for human dignity, solidarity and peaceful coexistence. It seems there is no significant difference between Dinka and Nuer concept of justice. However, as will be discussed under compensation section, a marked difference exists in practical applications not only between Dinka and Nuer but also amongst the different Dinka sections.

5.3 Customary law, local institutions and mechanisms

Local conflict resolution is generally based on customary law. Dinka and Nuer customary law principles and local practices tend to be largely similar. Most cases in Dinka and Nuer customary courts concern offences arising from the payment of bride wealth in marriage, offences against the marital systems and legal rights for women and finally offences against the human body: injury or homicide. Based on these similarities, in this section, I will concurrently discuss their customary laws, institutions and practices.

More than half of the respondents (27 out of 43) interviewed between January and June 2016 said the sources of customary law among Dinka and Nuer are customs, cultural values and beliefs in spiritual beings or powers and they carry the Dinka and the Nuer world views. One of them, for example, explained, "customary law comes from the culture and traditions which were being followed since precolonial time and people decided to maintain and orally transfer them from generation to generation in

the form of songs and storytelling” (KI 2: 23/1/16).¹¹⁵ Despite some changes, these cultures and traditions have been followed and are still being practised.

Regarding the how and when and by whom these laws were made, a respondent said, “during Nuer chiefs’ meetings in Fangak¹¹⁶ in the 1940s, emerging challenges from people’s experiences in maintaining peace, security and coexistence were discussed, formulated as rules and incorporated into the existing customary law” (KI 1: 20/1/16).¹¹⁷ A representative body of Nuer chiefs met at Fangak in 1945 for the first time to discuss differences in the law which had emerged in the settlement of intra-ethnic disputes (SAD, 767/6/36).¹¹⁸ From then on, these meetings have been occasionally held to review the situations and then come up with solutions that will form new resolutions for the chiefs. The rules were made in Fangak, another respondent emphasized, for example, how many cows would be paid when a person was intentionally killed and when the killing was unintentional or if somebody was just wounded, how many cows would be paid? If somebody took a girl by force, what was the penalty in terms of cattle? (KI 10: 7/2/16).¹¹⁹ The review of existing laws in the light of new situations and challenges led to finding solutions to recent problems. Since the socio-economic and indeed the whole life of the Nuer and of the Dinka were based on cattle, the entire system, of justice, compensation, restitution and reconciliation were centred on livestock.

The Nuer *Kuar muon* (Land or Earth Master) or *Kuar kwac* (Leopard-skin chief), the Dinka *Bany Bith* (Spear Master), traditional experts and, from the 1950s to the

¹¹⁵ Interview 2, with a Nuer chief: (23/1/2016)

¹¹⁶ Fangak is a town in Unity state, Nuerland. It has a historical significance, as it was the Administrative unit for the colonial authorities in Upper Nile where the first meeting of Nuer chiefs was held. It remained the seat for customary law where Nuer chiefs annually meet to formulate and review aspects of customary law.

¹¹⁷ Interview 1, with a Lawyer: (20/1/2016)

¹¹⁸ Introduction to a manual covering the legal situations dealt with by Nuer courts, based on Howell’s experiences in Central Nuer District. Howell, P.P. 1949; DUL, Special Collections GB 0033 SAD.

¹¹⁹ Interview 10, with a Nuer elder: (7/2/2016)

present, government chiefs, are the law makers (KI 2: 23/1/16).¹²⁰ These people have legislative powers, and through the judgments they pass on cases, precedents become procedures and are set. These are then followed in other similar cases. It seems these are the procedures other ethnic communities also follow to formulate their laws based on customs, practices and precedents. But basing procedures on precedents is sometimes problematic especially as local courts frequently make compromises such as ordering some small numbers of cattle to be paid to appease the complainant SAD 72/6/69).¹²¹ If the grounds for the action are not right, the number of cattle paid in these cases soon become a precedent, accepted as customary and are eventually judged to be traditional. This is where customary law lacks in consistency and due process according to the universalist view. In the absence of written rules and regulations, nothing could prevent irregularities from occurring. However, the situational and contextual adaptation and flexibility in dealing with cases could turn out to be a strength of customary law, though it could also be a route to easy interference and manipulation by the government and politicians.

Like other ethnic communities in Southern Sudan, between 1890s-1930s, Dinka and Nuer communities had no regular institutions for the enforcement of customary law. Social control was not maintained through the systematic application of 'the force of politically organized society' and on this strict definition, then, the universalists would argue they had no 'law'. But were they lawless? There were recognized standards for the control of human relationships even though these were maintained by sanctions too indeterminate to be called legal. According to Howell (1954: 22) a Nuer, for example, would think in terms of *cuong* (rights) and of *duer* (wrongs) In this

¹²⁰ Interview 2, with a Nuer Chief: (23/1/2016)

¹²¹ Howell's DPhil thesis, "A comparative study of customary law among the cattle-owning tribes in the Southern Sudan". Part 2 "Dinka and Shilluk law", Howell, P.P. 1950; DUL, Special Collections GB 0033 SAD.

sense, it means the failure to recognize a right or the infringement of a right. The Nuer has, because of his membership of a kinship group, both rights and obligations. *Duer* (wrong) had two meanings: first it was a wrong, when a man actively violated the right of another; it was also a wrong when a man refused to honour his obligations towards his kinsmen (Howell 1954: 22).

What were the sanctions which made for the observance of these rules? The primary sanction was self-help: retaliation if a wrong was committed, or the use of force to claim a right. Fear of retaliation was a sanction. This applies to individuals, who fear that those they have wronged or those to whom definite obligations have not been fulfilled will take physical action against them, and fear also that, because their action is agreed to be wrong, they will receive no support from their fellows if they resist. Moreover, the wronged may receive the help of their close kinsmen and neighbours, who will crush any attempt at resistance. This applied to groups or individuals in relation to other groups in the same way, and was expressed in the balanced opposition of ethnic segments and kinship groups (Howell 1954: 23). A Nuer may owe one of his kinsmen a cow and refuse to pay it. His kinsman will take the cow by stealth or wrest it from him by force, and the success of this action will depend on the extent of non-intervention of other relatives. In the relationship of individuals there is also the prevailing principle of collective responsibility, so that in fact there is rarely an isolated individual wrong or an isolated right (Murithi 2008). This explains why reparation of wrong is not an exclusive business of the offender and his family but of the clan or community, depending on the magnitude of the wrong. The strength of the right or the extent of the wrong, is qualified by the relationship of the parties concerned. Other sanctions are social reprobation, unpopularity, loss of approval and respect of neighbours, and hence loss of the privileges which the individual possesses as part of a larger social group. Such privileges are both social and political. They are also economic, because so many economic activities must be carried collectively.

For some wrongs there was also a religious sanction, which was often an expression of kinship ideals (Howell 1954: 23). What a man and his kinsmen feared in terms of

religious sanctions and legal processes was the breach of observance which would bring them disaster in the form of *dueer* (natural disease) or of sterility among themselves and their cattle. Although a deterrent to homicide, religion among the Nuer serves more as a sanction for carrying out accepted modes of behaviour after the event. It is further a sanction for the immediate confession of homicide, and therefore, the Nuer rarely if ever attempt to conceal their guilt (KI 2: 23/1/16).¹²² The dangers of concealing an act of homicide are expressed in the concept of *loic*.¹²³ But is this still the practice among the Dinka and the Nuer? There have been changes over the decades. What in the precolonial time operated through the sanction of expediency, fear of retaliation, and the force of limited public opinion, from 1940s up to now is enforced by the courts with the government's support.

But these changes have come with costs, as the colonial administration altered some elements of Dinka law simply because such law seemed incompatible with European and later Sudanese Islamic conceptions of justice. Without a full understanding of the social system for the maintenance of which Dinka and Nuer customary laws were devised, such alterations could have been more destructive. The British colonial administration for example introduced imprisonment as punishment in the local courts, something which has not been known before, as local institutions did not include police and prison (Mohamed, 2009) in (Gado 2013: 262). In such cases offenders were exiled from their areas to live in other areas beyond the boundaries of their ethnic homeland and only allowed to come back after a period. This contradicted the restorative approach to dealing with offenders which is central to African philosophy.

Another way colonialism impacted traditional practices was that DCs were in the position to approve a local justice practice or to reject it based on their personal and

¹²² Interview 2, with a Nuer chief: (23/1/2016)

¹²³ *Loic* refers to a situation when the killer has not confessed to his crime until long after the death of his victim. Such situation is associated with *cien* (curse) which brings bad spirits that cause sickness and/or death.

professional ethical and moral values. For example, in 1935 the DC of Yirol had to approve the total number of *Arwok*¹²⁴ payable in different instances such as for an unmarried girl, for a married woman on adultery and on a married woman on divorce. For example, in his letter of 21 February, 1935 to the Governor of Upper Nile, the DC of Yirol said, "I've accepted it as a rule that *Arwok* shall, in future, only be paid for living children" (SAD 767/11/2).¹²⁵ He furthermore said, "I promise to support the chiefs' courts in refusing divorce in such cases" (SAD 767/11/2).¹²⁶

The current state of Nuer and Dinka customary law, institutions and mechanisms reflect the life of the largely rural population which owes as much to customary principles and mechanisms as to local institutions. Generally, there is preference to customary courts regarding resolution of certain violations of rights including homicide. Although a homicide case is settled in statutory courts, most rural Dinka and Nuer do not consider the case over yet, revenge is likely to continue until reconciliation and reintegration rituals are performed in their communities by their traditional leaders.

5.4 Role of traditional authorities (spiritual Leaders)

Disputes and homicide cases in Dinka and Nuer communities during the pre-colonial period were resolved by spiritual leaders and elders who served as a group mediation and reconciliation forum. The main actor in Dinka community was the

¹²⁴ *Aruok* is the Dinka name for cattle paid as a fine in cases of adultery and fornication.

¹²⁵ Official correspondence, Upper Nile Province and Equatoria concerning Dinka customs and practices including G.M Hancock, DC. Yirol and M. W. Parr. Governor Upper Nile Province on the payment of *Aruok*, 1935-1939; DUL, Special Collections GB 0033 SAD.

¹²⁶ Official correspondence, Upper Nile Province and Equatoria concerning Dinka customs and practices including G.M Hancock, DC. Yirol and M. W. Parr. Governor Upper Nile Province on the payment of *Aruok*, 1935-1939; DUL, Special Collections GB 0033 SAD.

Bany Bith (Spear Master)¹²⁷ and in Nuer community was the *Kuar muon* (Land Master) or *Kuar kwac* (Leopard-Skin Chief). Their offices were hereditary and held by special priestly clans with “Spear” and the “Leopard Skin” as the symbols (insignia) of their offices respectively, which is handed from owner to successor ((Wassara 2007: 8). The Nuer *Kuar kwac* was called the ‘Leopard-skin chief’ because he was always clothed in a leopard skin (Evans-Pritchard 1940: 5). This traditional leader had two roles among the Nuer: that of Landlord (Earth or Land master) and that of Leopard-Skin Chief who was endowed with both a spiritual role and the administration of justice.

Evans-Pritchard (1940) has listed the functions of *Kuar kwac* or *kuar muon* as: management of the land especially the welfare of crops; a limited role in rain-making and the regulation of the weather; the ritual of homicide; the ritual of incest; the ritual of preventing feuds and protecting warriors on raiding expeditions; arbitration in all kind of disputes. Skill in arbitration was considered by the Nuer one of the attributes of *ruec* (leadership) and the *ruic naath* (Nuer leaders) often extended their influence into the sphere of legal disputes. One respondent said *Kuarmoun* was directly responsible for dispensing *cuong* (rights), also known as justice (KI 2: 23/1/16).¹²⁸ The *Kuarmoun* families were assigned the role of administering justice by the first ancestors of the Nuer; and the spiritual leaders believed that their powers came directly from God the creator, not smaller gods, because they could cast a curse on people who refused their will, which was God’s will, and something would happen” (KI 2: 23/1/16).¹²⁹ It was probably this spiritual power that traditional leaders used to resolve conflicts and maintain peaceful coexistence prior to the establishment of the Chiefs’ Court Ordinance.

¹²⁷ *Bany Bith* commonly translated as “Chief of the Fishing Spear” and as “ritual expert” among the Dinka is like *Kuar muon* (Earth Master) or *Kuar Kwac* (Leopard- skin chief) among the Nuer.

¹²⁸ Interview 2, with a Nuer chief: (23/1/2016)

¹²⁹ Interview 2, with a Nuer chief: (23/1/2016)

With certain duties to perform regarding the composition of blood-feuds, the Leopard-Skin Chief may be called upon to arbitrate in disputes of almost any kind. The role of the spiritual leader was purely that of a mediator and his powers, both ritual and secular, were brought into operation only if there was genuine desire by the hostile parties to reach an agreement. He had no executive powers with political force behind them, although it was expected that he would attempt to intervene in the initial stages of a feud, and he sometimes threatened to use his power to curse the disputants if they would not agree. Moreover, in all matters in dispute, the frequency with which he would be approached depended largely on his prestige and personality, and not merely on his hereditary status (Howell 1954: 211). Other persons, as I will discuss in the next section with no hereditary ritual status could also acquire a reputation for fairness and diplomacy and be employed as arbitrators in minor disputes.

The Dinka *Bany Bith* also had certain recognized functions to perform for their people. The principal one was that of arbitration between hostile parties within the group, the composition of homicide cases and the settling of disputes which were too bitter to be composed by the elders concerned. He was a ritual expert who had political influence within his own group's circle, but like the Nuer *Kuar Kwac*, he did not impose his authority, he represented the 'voice of the people' and articulated their wishes (SAD 72/6/38).¹³⁰ He was invited to arbitrate and by persuasion led the disputants to reach a compromise. This attitude is still apparent in the working of any Dinka court, just as it is among the Nuer. The traditional leader articulates values inherent in the social system, and has the power to curse violators, but is not expected to use his powers to his own ends and certainly does not impose his authority by threat of a curse unless warranted by exceptional circumstances. This spiritual leader has ritual powers which strengthen and emphasize his function in society as a peacemaker. The *Bany Bith* had religious powers and functions which

¹³⁰ Howell's DPhil thesis, "A comparative study of customary law among the cattle-owning tribes in the Southern Sudan". Part 2 "Dinka and Shilluk law". Howell, P.P. 1950; DUL, Special Collections GB 0033 SAD.

gave him political authority out of the ordinary and, such political status was later backed by the colonial government (SAD 72/6/41).¹³¹

The influence of these functionaries varied in effectiveness not only from tribe to tribe, but from time to time, but it was significant and their functions were similar. Both the Dinka *Bany Bith* and the Nuer *Kuarmuon* were essentially arbitrators, both had religious sanctions behind them, both had what may be called a respectable status well founded on tradition. Yet with both, the effectiveness of their powers depended largely on other sanctions prevailing; the actual need for co-ordination in the face of external aggression, the need for integration because a lack of security was a threat to the very continuance of social and economic existence (SAD 72/6/53).¹³²

The introduction of colonial chieftainship by the British in 1931, affected the powers of these leaders. The *Bany Alath* (colonial chief) in the Dinka community was the person whom the government appointed as chief to inherit power from the *Bany Bith* and he was a member of the customary court (Wassara 2007: 8). But these leaders as noted in Chapter Four, to some extent continued to work together. Cases that required taking an oath were referred to the *Bany Bith* before the *Bany Alath* made the ruling (Wassara 2007: 8). Among the Ngok Dinka for example, it was the *Bany Bith*, as a chosen representative of the government since 1945, who supervised these processes (SAD 72/6/42).¹³³ Unlike the interactions between the *Bany Alath*

¹³¹ Howell's DPhil thesis, "A comparative study of customary law among the cattle-owning tribes in the Southern Sudan". Part 2 "Dinka and Shilluk law". Howell, P.P. 1950; DUL, Special Collections GB 0033 SAD

¹³² Howell's DPhil thesis, "A comparative study of customary law among the cattle-owning tribes in the Southern Sudan". Part 2 "Dinka and Shilluk law". Howell, P.P. 1950; DUL, Special Collections GB 0033 SAD

¹³³ Howell's DPhil thesis, "A comparative study of customary law among the cattle-owning tribes in the Southern Sudan". Part 2 "Dinka and Shilluk law". Howell, P.P. 1950; DUL, Special Collections GB 0033 SAD.

and *Bany Bith* in the Dinka community, in the Nuer community such cooperation was apparently lacking and the role of the *Kuar kwac* was reduced to a ceremonial function as the administration of real justice was given to colonial chiefs (Wassara 2007: 8). This was a marked difference between the Nuer and the Dinka practices after the establishment of the chiefs' courts.

In both Dinka and Nuer communities, *Bany bith* and *Kuarmoun* families still exist and are still respected. But actors on local justice are government chiefs in collaboration with modern courts. The introduction of organized legal procedures with panel sanctions behind them, the instruments for the enforcement of administrative obligations not only in the execution of judgements but also collective tasks, have had a profound effect on political, socio-cultural and judicial systems and structure in local communities (SAD 72/6/42).¹³⁴ Although some government chiefs such as the Ngok Dinka paramount chief in theory more than in practice, combine administration of justice with spiritual role, most chiefs do not. This explains why some chiefs' courts refer people to diviners or other practitioners outside the court when required by circumstances.

5.5 Religious Functionaries and Magical Experts

There were also families in both Nuer and Dinka communities that played other peacemaking roles or managed specific disputes and issues. These ritual experts had specific functions to perform for public welfare, including: fertility in man and cattle, success in hunting and fishing, and in raids and warfare (Howell 1954: 211). Among the Nuer, they included the *wut ghok* (cattle expert), the *kuar thoi* (water expert), the *kuar yiika* (expert of fecundity of women), the *kuar juath* (expert of

¹³⁴ Howell's DPhil thesis, "A comparative study of customary law among the cattle-owning tribes in the Southern Sudan". Part 2 "Dinka and Shilluk law". Howell, P.P. 1950; DUL, Special Collections GB 0033 SAD.

epidemic diseases among humans) the *gwan tang* or *kuar bith* (expert who ensures the success of warriors in battle). One fact distinguished them from other categories of magical expert; they had an established ritual status in society, and were expected to carry out religious tasks which in some African tribes were less specialized or even embodied in the person of one man, for example, the *reth* (King) of the Shilluk tribe who was (apart from his political and executive functions) generally responsible for fertility in man, cattle and crops, as well as success in hunting and fishing (Howell 1954: 11). The special functions of the ritual experts and their magical powers were derived from and were dependent upon *kwoth* (gods or spirits) (Howell 1954: 204). Ancestors are intermediaries between man and God; prayer is offered by them to *kwoth*. A close relation exists between the concept of *kwoth* and religious practices.

The Nuer ethnic group has also known a history of prophets with the last famous one being Ngundeng Bong,¹³⁵ who gained considerable political power and widespread fame during the last century. Prophets are among the religious experts of the second category. They are the possessors of 'sky-spirits' direct and identify manifestations of *kwoth*. The activities of most of these experts were limited to ordinary ritual divination and diagnosis of the cause of the minor misfortunes which beset the individual. Though without extensive political power, they had exceptional influence over the Nuer (Howell 1954: 214). Prophets and persons possessed by spirits and magicians of lesser importance were clearly distinguished from the *ji twac*, (skin bearers), religious functionaries who had a traditional right to *twac* (a skin) as a badge of office. Unlike *ji twac*, owners of the spirits were more concerned with individuals, and were approached by individuals to perform ritual tasks for them in return for an agreed fee (Howell 1954: 214).¹³⁶ But *kuar kwac* could also be

¹³⁵ Ngundeng Bong was one of the famous Lou-Nuer prophets who died in 1905 and was believed to have had special power of prophecy. He was said to have prophesized a lot about South Sudan, including the ongoing civil war, characters and personalities of key actors in the conflict.

¹³⁶ This does not mean that the *ji twac* do not also receive fees. There are recognized fees for specific functions: for example, fees paid to the *kuar kwac* for arbitration in blood feuds (Howell, 1954:214).

approached by an individual, who would ask him to bless his land or his wives and ensure fertility.

Modern Nuer society still has prophets, but not all of them necessarily promote peace. Hutchinson and Pendle (2015: 15) for example recount the roles of two Nuer prophets; Gatdeang Dit and Nyachol who played crucial roles during the two decades of the SPLM/A war. Gatdeang strives to support traditional Nuer ethical codes of fighting and raiding unravelled by decades of civil war. His emphasis revolves not around the power of gun, but around the power of traditional cultural norms of hospitality, marriage, kinship, and shared cattle rights and obligations. He discouraged cattle raids between Dinka and Western Nuer, but encouraged intermarriages, partly with the aim of creating opportunities for the peaceful sharing of critical resources across this cultural and linguistic divide during periods of drought, hunger and insecurity (Hutchinson and Pendle 2015: 9). This resonates with the principle of *Ubuntu* where socio-economic and political spheres of life are constructed around solidarity, generosity and reciprocity.

Unlike Gadeang Dit whose spiritual and social roles promote harmony and build peace Nyachol's promote lethal violence and break peace through the construction of group identity around war (Hutchinson and Pendle 2015: 15). She discouraged Nuer-Nuer war but mobilized Nuer youth for raids and war with Dinka. However, with chiefs referring cases to her, Nyachol stepped in to fill a political vacuum created during the war by either the absence or weakness of judicial institutions. She offers a kind of judicial service that would in normal situation be the role of the government but which it has failed to provide; a failure that extends across South Sudan Pendle, et al. (2012) cited in (Hutchinson and Pendle 2015: 10). A situation such as this, where serious cases such as homicide are resolved through local mechanisms, confirms the critique directed against international and domestic legal systems that often either crumble in the face of violent conflict or are totally absent in rural

communities. There are still many Nuer prophets today including those whose spiritual powers are questioned. A respondent said, “some of the prophets we have today are making a living, because they can neither stop wars nor predict calamities” (KI 2: 23/1/16).¹³⁷

Among the Dinka, apart from the *Bany Bith* (Master of the Fishing Spear) found in Bahr el Ghazal and northern Upper Nile, all Dinka *Bany* (Masters) have *Ring*, the clan divinity of Flesh. But not all *Bany de Ring* or in some cases *Bany Riem*, (Masters of Blood), are spear masters (KI 12:2/2/16).¹³⁸ The *Bany de Ring* of Bor for example are not Spear Masters. This means that like in Nuer Society, there are other spiritual functionaries and experts in Dinka society who carry out similar or different spiritual functions besides *Bany Bith*.

5.6 Homicide and blood feuds

Among both Dinka and Nuer, homicide required a restoration of equilibrium between the groups involved. Whether the act was committed by stealth, in fair fight, or by accident, revenge was the first reaction, unless curbed promptly by actions from spiritual leaders or compensation. Cases concerning homicide and the payment of blood money revealed the nature of mutual obligations, in this case expressed in the duty to avenge or the duty to assist in the collection of blood-money to settle that feud by peaceful means (SAD 768/1/39).¹³⁹ One informant reported, “when somebody is killed, all members of the killer’s family are guilty, any of them can be killed to compensate for the dead” (KI 10: 7/2/16).¹⁴⁰ Retaliatory sanctions were operative since the first obligation of the dead man’s kinsmen was to take vengeance upon the killer or upon one of his kinsmen (Howell 1954: 27). Pursuit of the Dinka

¹³⁷ Interview 2, with a Nuer chief: (23/1/2016)

¹³⁸ Interview 12, with an academic (13/2/2016)

¹³⁹ Howell’s DPhil thesis, “A comparative study of customary law among the cattle-owning tribes in the Southern Sudan”. Part 2 “Dinka and Shilluk law”. Howell, P.P. 1950; DUL, Special Collections GB 0033 SAD

¹⁴⁰ Interview 10, with a Nuer elder: (7/2/ 2016)

ter (feud), by killing any one of his male kinsmen meant that this was extended to all persons of one's *wut* (lineage) as it was not necessary to take revenge on the person of the killer himself; any one of his kinsmen would do instead. Killing a person of the other group restored the balance by reducing their numbers proportionately.

The principle of a life for a life rarely led to permanent peace even if honour was satisfied for the moment. The likelihood of a positive settlement by compensation and the performance of the necessary ritual depended largely on the degree of social integration and interdependence of the groups involved (Howell 1954: 40-1). A feud between two closely related groups was settled without great difficulty because common habitation and common economic pursuits, strengthened by the tradition of blood relationship, demanded peaceful resolution as a matter of expediency. The sustained feud was usually one which had spread to larger units of society and became a permanent expression of opposition between them. Hostilities may stop, but even comparatively trivial provocation may be sufficient to start further fighting (Howell 1954: 40).

Among both Dinka and Nuer, the kinsmen of the killer and those of the dead man were not allowed to partake of food together (SAD 72/6/61).¹⁴¹ To do so would cause spiritual contamination in the form of physical disease which might well lead to death. The killer was believed to be in a condition of ritual impurity, and between the killer's group and the dead man's group there arises a condition of spiritual danger expressed in a prohibition on eating and drinking together and indeed on any form of social intercourse (SAD 72/6/66).¹⁴² This taboo on eating together, which is cross-cutting and still practised among some tribes of South Sudan, continues until final settlement has been reached and often long afterwards. These difficulties were removed by a series of ritual processes conducted by the Dinka *Bany Bith* whose

¹⁴¹ DUL; Howell's DPhil thesis, "A comparative study of customary law among the cattle-owning tribes in the Southern Sudan". Part 2 "Dinka and Shilluk law". Howell, P.P. 1950; Special Collections GB 0033 SAD.

¹⁴² DUL; Howell's DPhil thesis, "A comparative study of customary law among the cattle-owning tribes in the Southern Sudan". Part 2 "Dinka and Shilluk law". Howell, P.P. 1950; Special Collections GB 0033 SAD

functions were in this respect exactly like those of the Nuer *Kwar Kwac* (SAD 72/6/61).¹⁴³ They were called upon to solve the problem, and negotiate a blood wealth payment and stood as a ritual mediator between the victim's family and the culprit's.

During this process, the spiritual leader customarily gave the murderer asylum in his house; and when compensation was settled, he performed a ritual. Both parties had to abide by his decision; and if anybody violated his directives, he cast a curse and it was believed, that the person would die or something bad would happen to that family (KI 2: 23/1/16).¹⁴⁴ The curse was and still is a very powerful tool of social control among the Nuer and the Dinka. The fear of a curse invokes compliance by the parties to a conflict to pay compensation and to respect this leader who had no political or executive authority to enforce decisions but who alone had moral force (Wassara 2007: 8). The curse has always been a powerful mechanism of social control across communities in South Sudan. In judicial terms, spiritual leaders' power to curse has been a crucial sanction against harmful and antisocial behaviour (Leonardi et al. 2010: 54).

The spiritual leaders as noted above were the mediators, but without authority to enforce decisions and ability to compel the people to come to an agreement even though they have spiritual powers in the form of a curse. They only use their powers in a conventional manner as spokesmen of a general, moral sentiment which condemns the killing of kinsmen; both neighbours and remote parties (SAD72/6/61).¹⁴⁵ Traditionally the spiritual leader was simply the focus of public opinion and could operate only when the situation was such that his activities as a mediator were both expedient, convenient and in demand. *Bany bith*, like *Kuaar*

¹⁴³ DUL; Howell's DPhil thesis, "A comparative study of customary law among the cattle-owning tribes in the Southern Sudan". Part 2 "Dinka and Shilluk law". Howell, P.P. 1950, Special Collections GB 0033 SAD.

¹⁴⁴ Interview 2, with a Nuer chief: (23/2/2016)

¹⁴⁵ DUL; Howell's DPhil thesis, "A comparative study of customary law among the cattle-owning tribes in the Southern Sudan". Part 2 "Dinka and Shilluk law". Howell, P.P. 1950; Special Collections GB 0033 SAD.

kwac, can draw a line in the ground between the warring parties with his spear, across which they dare not pass and actual hostilities are unlikely to take place in the presence of this spiritual leader, but this does not prevent the parties from continuing hostilities later (SAD 72/6/61).¹⁴⁶ The good will of neighbours is needed especially their assistance in resisting external aggression.

But law enforcement is as important as having the law. The lack of legal sanctions and force by the local justice system makes it unlikely to be called law by international standards, and therefore, has little need of recognition. However, currently, much of the peacemaking role and maintenance of order is taken up by the government, through the chiefs' courts whose decisions are enforced by the government. Since the 1940s, some paramount chiefs such as the one of Ngok Dinka, combines both as *Bany bith* and government chief. In cases of homicide, the culprits now report or taken to the police custody instead of seeking asylum in the residence of the spiritual leaders.

5.7 Mediation and Arbitration

Since the introduction of the colonial chieftaincy in 1931 to the present, the mediation role of the Nuer and Dinka spiritual leaders for the resolving of blood-feuds and to arbitrate in disputes has been largely played by chiefs and councils of elders. It seemed the change was in keeping with the colonial policy, which meant having in place institutions and leaders who would serve colonial interest.

Among the Twic Dinka of Bahr el Ghazal and the Ngok Dinka of Abyei, for example, when a dispute leads to homicide, local chiefs and elders mediate between the two involved families and negotiate accounts of the murder and subsequent

¹⁴⁶ DUL; Howell's DPhil thesis, "A comparative study of customary law among the cattle-owning tribes in the Southern Sudan". Part 2 "Dinka and Shilluk law". Howell, P.P. 1950, Special Collections GB 0033 SAD.

compensation (KI 29: 19/2/16).¹⁴⁷ The negotiation and mediation process may last for weeks and even months depending on the nature of the case. The Elders will work to first establish the truth regarding the root causes and impact of the hostilities before making decisions on compensation. One respondent stated that “first you have to accept that you have committed a crime; and once an agreement is reached, the offender is asked to pay “*puk*” (blood price) to the family of the deceased” (KI 10: 7/2/16).¹⁴⁸ This process is followed by reconciliation and re-integration rituals that may or may not involve the role of *Bany Bith* or *Kwar Kwac*.

5.7.1 Truth-seeking

Local peacemaking begins with truth seeking, the establishment of guilt, confession then compensation (Komakech 2012). This is because the first aim of the mediation and problem-solving approach is to understand what took place by uncovering the whole truth. The truth-seeking process is where the offender and witnesses are allowed ample time to tell their stories about what happened and to answer questions from those in attendance before the elders and chiefs decide the case. The telling of one’s story, followed by questions and clarifications would almost take the place of what can be considered an investigation in an ordinary court trial. Everything could be said in such a setting, even cases of theft and sexual misconduct. The community environment would not be intimidating as in a court of law but supporting (Balati 2015: 7) This contrasts with the modern peace process with its structured and predetermined time and outcomes, where little or no effort is made to address the root causes of the conflict.

Truth-telling is an integral part of the justice system in local societies (Alie 2008: 133). In Dinka and Nuer local peacemaking, truth-telling takes the form of lengthy stories. As noted by many scholars who wrote about the 1999 Wunlit Dinka-Nuer peace conference, in the Nilotic tradition, peace can only truly be achieved when

¹⁴⁷ Interview 29, with a Dinka woman: (19/2/2016)

¹⁴⁸ Interview 10, with a Nuer elder: (7/2/2016)

everyone knows fully what wrongs were committed (Duany 2003; Bradbury et al 2006; Ashworth 2014: 156). According to Johnson (2014b: 4), possibly the most remarkable application of the customary court system during the second civil war was in the 1999 Wunlit conference. The two communities were each given an opportunity to tell their story about their suffering and bitterness. Each wronged group spoke long and fully of its issues (Ashworth 2014: 156). One of the respondents who attended the conference recalled, “Time was not a problem and nobody was in a hurry to conclude the peace meeting as long as accumulated grievances were being aired. People told their stories and it was this releasing of bitterness that led to reconciliation” (KI 25: 27/2/16).¹⁴⁹ The significance of lengthy storytelling is that it helps release tensions and bitterness and to raise awareness of the kinds of suffering and destruction the victims have suffered. According to Boege (2006: 8), restitution, reconciliation and restoration of harmony and relationships can only be built on a mutual understanding of what went wrong in the past. Therefore, the disputing parties must negotiate a consensus regarding the interpretation of the past. This is an often very lengthy endeavour as facts must be established and truth revealed.

Although story-telling is a vital mechanism for uncovering truths and releasing of tensions and bitterness, it can be a narration of serious human rights violations which sometimes simply ends up with a declaration of amnesty for the perpetrators. This is where, in the universalist’s view based on retributive justice, Dinka and Nuer justice systems may be deemed to be in contravention of laws against human rights violations including atrocity crimes. But the fact that uncovering truths and airing grievances such as in Wunlit, brought about a degree of reconciliation and put in place local procedures of compensation and the return of abductees can be measured as an achievement in the line of restorative justice (Balati 2015: 8).

¹⁴⁹ Interview 25, with a peacebuilding practitioner: (27/2/2016)

5.7.2 Oaths and Ordeal among the Nuer

Traditional and local approaches employ certain truth-seeking techniques when there is denial or a suspect does not want to admit culpability for homicide and other serious offences. In this situation, the services of diviners, medicine men and other supernatural agencies are sought to help identify the culprit (Alie 2008: 137). Oath, ordeal and swearing are the common truth-seeking techniques used in traditional justice systems as the examples below show. Among the Nuer, the ceremony of oath was usually performed by the Leopard-Skin Chief, who was called in for this purpose. There were two common forms of *kweng* (oath); *kwil* or *kap tang* (to hold the spear-shaft) which was used in a variety of circumstances; and *math* (literally to drink) the form often employed in cases of unconfessed homicide. The taking of an oath was not an individual process carried out by one man alone. In the former ceremony both accuser and accused were expected to take part, and it amounted to something of an ordeal between them; in the latter where there was no known accused, those suspected and all their kinsmen were expected to participate. The colonial government discouraged the use of such an oath especially in court. Nuer chiefs and members were also reluctant, mainly in keeping with government policy (Howell 1954: 219). Although they may be willing, participants were often persuaded to take some other course.

In the *kap tang* ceremony, although the *nale kap tang* referred to the spear of the Leopard-Skin Chief, the most important ritual association was clearly with the earth, and the ceremony amounted to a symbolic and sympathetic enactment of the process of burying the dead.

Table 2: Oaths and Ordeal among the Nuer

***Kap tang* oath ceremony among the Nuer**

“A small hole was dug in the ground by the Leopard-Skin Chief, and this represented the grave; over it were placed sprigs of *Calotropis proceri* and *balanitis aegyptiaca*, for these were usually spread over the newly buried dead as protection against the diggings of hyenas. Over this hole the Leopard-Skin Chief put his spear, while the disputants squatted on either side and placed their right hands on the spear-shaft and each swore his innocence or belief in the other’s guilt. It was believed that the one who was telling a lie would be seized with sickness possibly followed by death unless an antidote was applied. If either party fell ill he would hurry to the Leopard-Skin Chief, who reversed the process and thereby removed the contamination. Sometimes the ritual was less elaborate; the disputants simply passed under the outspread leopard-skin spear held by the owner. *Math* was applied, though not always, in cases of homicide where the killer had not confessed or was quite unknown. It was performed by the Leopard-Skin Chief, who filled a gourd with milk from one of the cows belonging to the dead man. Those who protested their innocence were then expected to drink of the milk. This act openly defied the taboo on drinking or eating which automatically came into operation between the hostile parties in a blood-feud. There could be no graver danger than drinking the milk of the dead man’s cow if there was blood between them” (Howell 1954: 220).

Since contamination was extended to all kinsmen of the unknown killer, it was unlikely that anyone would agree to take the oath unless he was certain of the innocence of all his kin. Evidence or test by ordeal was questioned by the Governor of Upper Nile in 1935. This was a reaction to a situation where a defendant refused to take the oath and the court inevitably drew its own conclusions. At the Governor’s order, an ordeal should not be allowed which tended to emphasize or spread the

magical power of some living person, chief or commoner, if it was repugnant to humanity, equality or good conscience (SAD 767/11/7).¹⁵⁰

5.7.3 Swearing among the Dinka

Among the Dinka, *thiep* (bean) was used as a test of a person's guilt when accused of causing death by witchcraft or poison. The seeds used to belong to a climbing plant called "*thiep*" (SAD 767/9/13).¹⁵¹ They must not be handled before the ceremony except by persons of either sex who are too young or too old for sexual intercourse. The owner of the seeds took an important subsidiary part (SAD 767/9/6).¹⁵² During the previous 24 hours, each of the two men undergoing this trial took very little to eat or drink to have their stomachs as empty as possible. They brought with them a spear and goat each as payment to the owner of the seeds, and decided on some measure such as a bull, calf or even several head of cattle to be paid by the loser to the winner. This was quite distinct from any judgment in cattle because of the trial and was, in short, a side bet (SAD 767/9/6).¹⁵³

¹⁵⁰ Official correspondence, Upper Nile Province and Equatoria concerning Dinka customs and practices including G.M Hancock, DC. Yirol and M. W. Parr. Governor Upper Nile Province on the payment of Aruok, 1935-1939, with reply from E.G. Coryton Deputy Governor; DUL, Special Collections GB 0033 SAD.

¹⁵¹ Letters from D. W. Cowie, A/Government Analyst to Governor Equatoria and Botanist, Botany and Plant Pathology section to Cowie re to identification of seed referred to above, 1938; DUL, Special Collections GB 0033 SAD.

¹⁵² Note by A. E. D. Penn, DC Lakes on *thiep*, the customary mode of swearing among the Agar with covering letter to Governor of Equatoria and resume by W.F. Cottrell, A. D. C. Lakes District of a case in which the chiefs' court asked that their customary method *thiep* be resorted to, 1938; DUL, Special Collections GB 0033 SAD.

¹⁵³ Note by A. E. D. Penn, DC Lakes on *thiep*, the customary mode of swearing among the Agar with covering letter to Governor of Equatoria and resume by W.F. Cottrell, A. D. C. Lakes District of a case in which the chiefs' court asked that their customary method *thiep* be resorted to, 1938; DUL, Special Collections GB 0033 SAD.

Table 1: Swearing among the Dinka

Swearing with *thiep* among the Dinka

“A large bucket of water, with a spare one at hand if required, was placed before each man and a large shallow pan. A fire was lit and the seeds put into the embers, the owners recited, “My seeds, I put you on the fire (the actual putting was done by the small boy) to show us the truth. As you were suffering from the fire and showed that you have life, reveal the truth to us”. The seeds were then taken out and put with a little water into a gourd before each man, and the owner of the seeds smacked the bellies of each of the goats provided, saying. “If your owner is lying, let your belly swell and prove it”. He then cut off the tip of one ear from each goat and threw it on the fire. Before starting to drink each man prayed that if he was telling the truth, he would vomit up the seed but that if he was lying, the seed would remain in his stomach. They then swallowed the seed with their first mouthful and their mouths were inspected to see whether they were trying to conceal the seed behind the teeth or under the tongue with a mouthful of water. Now the real drinking started and they were supplied with water until they began vomiting it up again in quarts. They must each have drunk and spewed up some two or three gallons before the elderly witness produced his seed or, rather part of it as it had broken into bits (SAD 767/9/7).¹⁵⁴ The *Ran Wel* (the master of ceremonies) who oversaw the ceremony was paid for his service” (SAD 767/9/10).¹⁵⁵

¹⁵⁴ Note by A. E. D. Penn, DC Lakes on *thiep*, the customary mode of swearing among the Agar with covering letter to Governor of Equatoria and resume by W.F. Cottrell, A. D. C. Lakes District of a case in which the chiefs’ court asked that their customary method *thiep* be resorted to, 1938; DUL, Special Collections GB 0033 SAD.

¹⁵⁵ Note by A. E. D. Penn, DC Lakes on *thiep*, the customary mode of swearing among the Agar with covering letter to Governor of Equatoria and resume by W.F. Cottrell, A. D. C. Lakes District of a case in which the chiefs’ court asked that their customary method *thiep* be resorted to, 1938; DUL, Special Collections GB 0033 SAD

This practice was discouraged by the colonial administration as it would appear to be a danger to the participants' health not only from the swallowing of the bean or its after effects, but also from the excessive amount of water swallowed. According to the Dinka of Yirol DC, the last occasion it was used, in the government recognized courts, was 1925 (SAD 767/9/12).¹⁵⁶ The Dinka used other methods of looking for evidence such as consulting traditional and magical experts in witchcraft and curse-related disputes, known as private cases. These were sometimes allotted to such functionaries by the customary courts, except for *thiep*. It seems this truth-seeking practice was one that needed a degree of moderation given its physical and psychological effects on the participants subjected to it. This may be where colonialism had some positive impact as it discouraged some negative traditional practices that today would be described as violations of individual and community rights and welfare.

The practice of truth-seeking through consultation with witchdoctors and some traditional and magical experts may still be in practice among the Dinka and the Nuer rural communities, but with the advent of churches and conversion to Christianity and other monotheistic religions in recent years, these practices have generally become unpopular and it seems customary courts no longer also refer people for evidence to these experts. They encourage evidence that comes from witness' testimonies.

5.8 Compensation

Once the truth regarding homicide is established and the killer identified, the feud might be amicably resolved, balance restored and future hostility avoided by payment of compensation. The case is examined based on the circumstances that led to the killing and in accordance with the perpetrator's intention; whether the killing

¹⁵⁶ Note by A. E. D. Penn, DC Lakes on *thiep*, the customary mode of swearing among the Agar with covering letter to Governor of Equatoria and resume by W.F. Cottrell, A. D. C. Lakes District of a case in which the chiefs' court asked that their customary method *thiep* be resorted to, 1938; DUL, Special Collections GB 0033 SAD.

was done intentionally or unintentionally and compensation will be charged accordingly (KI 10: 7/2/16).¹⁵⁷ Theoretically the question of intention should not enter the assessment of compensation. It should be the same since the main object of payment of blood money is to restore the balance between the two groups in opposition and as will be shortly discussed, to marry a wife to the dead man. But some Nuer sections do take into consideration the intention of the killer. The difference in the weapon used was also a qualification among some Nuer sections as among the Dinka, where the use of the fighting-spear for example, was an indication of intention. Compensation for intentional homicide was usually at least double that for accidental killing (KI10:7/2/16).¹⁵⁸

Justice was achieved by the payment of *puk* (blood price) among the Dinka and *ghok thunge* (cattle of compensation) among the Nuer (Howell 1954: 6), commonly paid in the form of cattle. The present-day Twic Dinka of Bahr el Ghazal and the Ngok Dinka for example, pay 31 cows, for a youth, 15 for an old person and 15 for a child (KI 14: 19/2/16).¹⁵⁹ The numbers of cows paid as compensation are not the same for all sections of the Dinka ethnic groupings. The Dinka from Bor, for example, pay 50 cows when it is a planned murder and 25 for manslaughter (KI 10: 7/2/16).¹⁶⁰ The Nuer people pay 50 cows for a person unintentionally killed, but the number of cows paid ranges between 80 and 100 for intentional killing (KI 10: 7/2/16).¹⁶¹ Previously, in all Nuer disputes, scales of compensation were treated more as a basis upon which a compromise could be reached than an exact rule, and compromise was

¹⁵⁷ Interview 10, with a Nuer elder: (7/2/2016)

¹⁵⁸ Interview with a Nuer elder: (7/2/2016)

¹⁵⁹ Interview 14, with a Dinka chief: (19/2/2016)

¹⁶⁰ Interview 10, with a Dinka elder: (7/2/2016)

¹⁶¹ Interview 10, with a Nuer elder: (7/2/2016)

more likely in cases of unintentional homicide rather than intentional killing (SAD 72/6/68).¹⁶²

There was no distinction in the number of cattle paid in compensation for the death of women and uninitiated boys, but since a man had already paid bride wealth for his wife, he would not be expected to pay full compensation if he killed her, but he would be expected to pay something to her kinsmen known as *Ghok Riem* (usually three cattle) to re-establish peaceful relations with them. Similarly, if a man killed a close kinsman he would not be expected to pay more than *Ghok Riem* (SAD 72/6/64).¹⁶³ The current number of cattle considered reasonable to compensate for human life and to constitute fairness and justice in post-conflict situations, also appears to vary among sections of ethnic groups, and across different societies and cultures in South Sudan and in Africa as a continent. This suggests that traditional and local practices are socially constructed: a philosophical paradigm that underpins this study. It also means that tradition is not static as cultures meet each other and adopt innovative ideas and practices.

On the other hand, among Dinka as among Nuer, if a woman killed someone, her legal husband would be held responsible, although her own kinsmen are expected to assist him in the collection of compensatory cattle (SAD 72/6/65).¹⁶⁴ This was yet another reflection of gender inequality and economic disparity between men and women in Dinka and Nuer societies but Howell was writing in the 1940s and 1950s. Currently, all persons are supposedly equal before the law, and constitutionally,

¹⁶² Howell's DPhil thesis, "A comparative study of customary law among the cattle-owning tribes in the Southern Sudan". Part 2 "Dinka and Shilluk law". Howell. P.P. 1950; DUL, Special Collections GB 0033 SAD.

¹⁶³ Howell's DPhil thesis, "A comparative study of customary law among the cattle-owning tribes in the Southern Sudan". Part 2 "Dinka and Shilluk law". Howell. P.P. 1950; DUL, Special Collections GB 0033 SAD.

¹⁶⁴ Howell's DPhil thesis, "A comparative study of customary law among the cattle-owning tribes in the Southern Sudan". Part 2 "Dinka and Shilluk law". Howell. P.P. 1950; DUL, Special Collections GB 0033 SAD.

homicide is a crime beyond the remit of traditional authorities, although they remain key actors in reconciliation rituals.

Significance of cattle compensation

The significance of the Dinka and the Nuer payment of blood compensation by cattle and not cash money is due to the following; first because their socio-economic life is centred on cattle and so cattle define their day-to-day life; second, payment by cattle is an effective way of restoring the original balance and allowing social and economic contacts to continue. The primary object of this payment is to marry a *ting de koic* (Ghost-Wife) to the deceased, known as a *ciek jooka* among the Nuer, and thereby assure the continuation of the dead man's line for posterity and the future of his kinship group, thus appeasing the reaction of indignation which his kindred were bound to display (KI 3: 27/2/16).¹⁶⁵ Thus, *Puk* and *Thung*, the indemnity for homicide, was primarily intended for this purpose and for this reason, compensation should theoretically be in proportion to current rates of bride wealth though the relative number was not exact as there were other claims to be met, for example, a cow was taken by *Bany Bith* for his ritual performances. Third, the group also lost the economic asset of the deceased both in ensuring the subsistence of his immediate family and in the collective economic interests of his associates (Howell 1954: 41). Therefore, other close kinsmen must receive some share of the compensation to meet this loss, to satisfy their indignation and their desire for revenge and because, were the position reversed, they might be called upon to subscribe towards the payment of compensation to some other groups.

Traditional communal lifestyle and revenge are still practised in the rural Dinka and Nuer communities. However, With the changes which have happened over time, and the existence of the government as a recognized authority with penal sanctions behind it, revenge as a form of justice and a way of expressing anger has been discouraged as the law must take its course, although this law is largely absent in

¹⁶⁵ Interview 3, with a Nuer youth: (27/2/2016)

rural communities. The conception of individual punishment inflicted on the killer and not on the entire family or community members has become a common norm enforced by the government. Depending on circumstances, Dinka and Nuer also now accept cash money payment as blood compensation although often the money is in turn used to acquire cattle in line with their traditional practices.

5.9 Reconciliation and re-integration of offenders

The notion of reconciliation as a means of ending cycles of violence and achieving normal relations remains the most widely appreciated aspect of local justice. In the traditional context, justice and reconciliation are generally inseparable (Alie 2008: 133). I have talked about justice processes in the preceding sections of this chapter. I now turn to discuss reconciliation, and I argue that reconciliation is built into the justice system of the Dinka and the Nuer. This is contrary to the international idea of justice where reconciliation is not a key consideration despite the claim that the process also leads to reconciliation.

5.9.1 Concept of reconciliation among the Nuer

The Nuer word *thong* (reconciliation) means the coming together in peace of two parties who have been in conflict. The word is used for murder-related reconciliation. Reconciliation can also mean *palika* (forgiveness) and its aim is peaceful coexistence. This is suggestive of the position of Freeman and Hayner (2003: 148) who argue that the aim of reconciliation is to break a cycle of violence and promote peaceful coexistence. But it also reflects the principles of *Ubuntu* which promotes harmony as prerequisite of peaceful coexistence.

The concept and aim of reconciliation as defined in the contexts of Nuer mechanisms suggest a mutual understanding across societies in Africa and some parts of the world. Alie (2008: 133), for example, defines reconciliation in the context of Sierra Leone as the act of reuniting groups or parties who have been fractured as a result of conflict and may also involve the granting of some form of reparation to the aggrieved party. Similarly, in the case of Northern Uganda, Komakech (2012: 71) argues that reconciliation refers to a normalization of relations between the offended

and offending parties to a conflict. Based on the above definitions and viewed from the *ubuntu* perspective, an abuse of any sort between clans, or even within a clan, was considered a disturbance in the relationship between the people who depended on each other for many things. Repairing broken relationships, and maintaining the status quo based on this philosophy, is the essence and goal of reconciliation as is the case with the Dinka and the Nuer communities. But the return to, and maintenance of status quo may be problematic if it was characterized by oppression.

5.9.2 Concept of reconciliation among the Dinka

The word reconciliation in Dinka is *dour* (to come back) to the previous life. The Dinka perceive conflict as separating people because it damages relationships and creates a gap between people; individuals, groups and communities. One respondent remarked, “reconciliation is the last step in the process of peacemaking in the Dinka community; this comes after the truth is established by the elders and chiefs and compensation paid” (KI 10: 7/2/16).¹⁶⁶ Compensation payment is followed by reconciliation rituals that were performed by *Bany Bith*. On the appointed day, after compensation, cattle were collected by the killer’s kinsmen and handed over to the *Bany Bith*, the two parties assemble and the *Bany Bith* sacrifices one of the bulls, the *Mior de yuom* (the bull of the bone). He then takes the bones of the right hide leg of the beast, splits in two and throws one half to the killer’s party, the other half to the relatives of the deceased’s brother or son or another legal heir. Partaking in eating of the same animal is a significant act in that it signifies unity and togetherness after separation since the occurrence of homicide. Brock-Utne (2001: 3) emphasizes the significance of traditional practices such as the use of rituals, symbols and interpretation of myths to bring conflict to an end. These include the identification of cattle and /or goats that must be sacrificed to cleanse the evils of conflict from society.

¹⁶⁶ Interview 10, with a Nuer elder: (7/2/2016)

Among the Twic of Bahr el Ghazal and Ngok Dinka, each of the families involved brings a goat and they exchange their goat meat and eat together for the first time since the incident happened. The Dinka from Bor and the Nuer use a white bull for reconciliation (KI 29: 19/2/16).¹⁶⁷ As noted earlier, variations in reconciliation practices exist among the different sections of Dinka ethnic groups. The bull is called *Thon-Mabor* in Dinka and *Tut Mabor* in Nuer (KI 9: 7/2/16)¹⁶⁸. A white bull was used during the Wunlit PPP held to reconcile the Nuer and Dinka in 1999 (Ashworth 2014: 155)

5.10 Dinka and Nuer local reconciliation practices

Traditional rapprochement or the restoration of relationships between parties in conflict is strongly connected to a process of shared eating and drinking, often after slaughtering an animal. The reconciliation rituals mark the end of bitterness and the beginning of harmony until another incident happens. The ritual ceremony and the sharing of meals signify new relationships when people have cut contact after the event of a murder.

The significance of these practices is that they are attached to real day-to-day life, and it is believed that death will follow if someone participates in that process and later deviates. An animal is always sacrificed and they say whenever you stray from the reconciliation commitment, you will face the same consequences. At the Dinka-Nuer reconciliation in Wunlit 1999, discussed in Chapter Four, the elders said; “*Mabor* is the Bull that will be sacrificed for reconciliation and peace; anyone who breaks this commitment to peace will follow the way of *Mabor*. A curse is placed on anyone who takes part in the *Mabor* sacrifice and later breaks the oath. It is very serious curse; it is a curse of death” NSCC (2002:60) in Ashworth (2014: 155). Ashworth (2014: 156), recounts that once the bull was slaughtered, and its blood held aloft for a blessing and oblation, some chiefs decided to leave and were quoted

¹⁶⁷ Interview 29, with a Dinka woman: (19/2/2016)

¹⁶⁸ Interview 9, with a Dinka elder: (7/2/2016)

as saying, “we have sacrificed the bull; we are now at peace”. This means that once the agreement has been sealed in a ritual way, it is binding.

But the politicization of local peace processes has caused some agreements to be short-lived. One respondent pointed out that “though Lilir and Wunlit peace agreements were very powerful they didn’t last; after only two years some factions of these tribes went back to war” (KI 3: 27/2/16).¹⁶⁹ The same respondent maintained that in recent years local agreements are dishonoured for two reasons: “first, because of manipulation of the local population by politicians; second, modernity has undermined the role of traditional healers to inflict curses. This used to be dreaded and effective, but a curse is nowadays explained away scientifically by educated people and spiritually by the adherents of modern religions” (KI 3: 27/2/16).¹⁷⁰ This points to the influence of evangelism and modernity on local mechanisms in achieving social control and reconciliation. Similarly, the 1994 peace and reconciliation conference in Akobo appeared to offer a resolution to the Lou-Jikany intra-ethnic conflict, but it did not provide an enduring resolution (Bradbury et al 2006: 32). Although some respondents insisted that there has been no fighting between the Lou and Jikany since the Akobo peace conference, it seems that in local mediation such as this, if the terms of the settlement do not serve the political interests of some politicians from the feuding communities, the agreements may be tampered with despite the rituals of curse, oath-swearing and shared meals.

Cleansing and re-integration

Cleansing and re-integration ceremonies remain integral to the major practices of forgiveness and reconciliation among local communities in South Sudan. Cleansing is an essential element of traditional reconciliation among the Dinka and the Nuer communities. The marks put on the perpetrator by the spiritual leader and the ritual

¹⁶⁹ Interview 3, with a Nuer youth: (27/2/2016)

¹⁷⁰ Interview 3, with a Nuer youth: (27/2/2016)

of cleansing performed during the reconciliation, released the evil spirit and brought an end to the possibility of any revenge (Howell 1954). As part of the exoneration process cleansing finds expression in the slaughtering of a bull, a sheep, a goat and sometimes even a chicken. It could also take the form of drinking of water from the same calabash by both the victim and perpetrator, accompanied by some pronouncements by the performing elders. Among the Acholi of Northern Uganda who have the same traditional practices as the Acholi in South Sudan, cleansing has also been regarded as a welcoming back and reintegrating of the individual into the community. It was applied to the Lord's Resistance Army (LRA) abductees and ex-combatants (Komakech 2012: 70-1). Reconciliation was only possible when truth-telling, compensation and cleansings had already taken place or were part of the final settlement.

Role of Nuer and Dinka Women

Nuer and Dinka women have frequently played a crucial role in conflict resolution and reconciliation though often behind the scenes. Elderly women in the Dinka and Nuer ethnic groups are highly respected and exert profound influence on men throughout the community when it comes to issues of peace (KI 2: 23/1/16).¹⁷¹ However, generally they were kept in the background to provide necessary services such as water, food, alcohol and so forth, though they took part in the concluding performances, composing of peace songs, dancing etc. A Dinka woman who was asked to mobilize women to do the cooking during the 1999 Wunlit PPP, reiterated her response, as recounted by Ashworth (2014: 157), "I said no, the women will do that naturally anyway, but what about the voice of the women in the conference? Who are the ones who suffer in the war? I insisted that one third of the delegates should be women and that they should be allowed to speak". One woman was later reported to have chaired one of the sub-committees with a translator by her side (Ashworth 2014: 157). It seems that the potential of women in the reconciliation

¹⁷¹ Interview 2, with a Nuer chief: (23/1/2016)

processes has not been fully utilized, particularly their role in addressing the root causes of the problems and the drawing up of recommendations.

An informant accepted that conflict affects men and women differently and it is important to conduct peacemaking at various levels and to include women at all stages of the peace and reconciliation process, but she equally acknowledged women's role as perpetrators of discord. "It would be naïve to always think of women as neutral or passive victims in disputes; today women are active combatants, and politically represent the opposing constituents they come from" (KI 38: 16/3/16).¹⁷² This suggests that the neutrality of women in hostilities and peacemaking is questionable and irrespective of how differently conflict affects men and women. It is wise to also consider women as potential instigators of conflict, because they are just people and not some kind of benevolent collective.

Through their dual role, Nuer women for example can signal danger in an exaggerated fashion that would send men to war: signals that could be interpreted as the presence of impending danger such as raids (KI 2: 23/1/16).¹⁷³ Such an influence could also have a positive aspect as women in times of crisis have been known to prevent men from going to war even if the men had already decided and were preparing themselves. In such cases, they would embrace their men and stand in their way, and to overcome the men's determination they would even threaten to strip naked to shame the men (KI 2: 23/1/16).¹⁷⁴ During the SPLM/A civil war in the 1990s, women threatened a no-sex strike, if ceasefire was not implemented and they reminded the men of women's traditional influence on war and peace, and warned, "we will stop giving birth" (Ashworth 2014: 158). Such scenarios suggest that women can take the lead for peace and reconciliation.

¹⁷² Interview 38, with European Diplomat: (16/3/2016)

¹⁷³ Interview 2, with a Nuer chief: (23/1/2016)

¹⁷⁴ Interview 2 with a Nuer chief: (23/1/2016)

5.11 Conclusion

This chapter examined Dinka and Nuer justice and reconciliation mechanisms as practised in the aftermath of violent conflict. It discussed concepts of justice and reconciliation and how they work among the Dinka and the Nuer of South Sudan; subjected them to scrutiny based on the Universalist notion of human rights and justice. It established that though these mechanisms remain normatively popular for their previous roles, their strengths have been undermined by several factors both external and internal including: colonialism, modernization, evangelism and wars. However, despite current weaknesses and challenges, opportunities exist at both the theoretical and practical levels: first, culture being non-static and socially constructed suggests that these mechanisms can be reconstructed by adapting new and progressive values from other practices. At the practical level, there is room to engage with other procedures such as international practices which could result in a mutually complementary approach that would profit from the benefits of both as they strive to work together. The following Chapter sets out the analysis defining this thesis by setting out the convergences and divergences of these 'traditional' and modern normative justice methods.

Chapter Six

Blending Local and International Approaches

6.0 Introduction

This is an analysis chapter that considers in detail the local and international justice systems and practices that relate to post-conflict justice and reconciliation. It discusses and assesses the potential roles and limits of these institutions and approaches with a view to establishing a common ground for the possible application of local strategies in the resolution of contemporary armed engagements. It examines the extent to which the Dinka and the Nuer justice and reconciliation mechanisms can be applied to transitional justice. It is a synthesis of topics discussed in this study, ranging from theories and historical context, to case studies and empirical evidence. By bringing together and analysing the key themes of the thesis, this chapter offers a detailed account of the nature, types and causes of conflicts in South Sudan both local and national, before, during and after the colonial period. It assesses the traditional methods used to resolve local disputes, the changes that have happened over time and their relevance to modern conflicts. The focus of the chapter is on understanding the divergences and convergences between the two approaches for a possible fusion and harmonizing of intervention in dealing with past human rights violations and efforts towards reconciliation.

The chapter argues that local justice and reconciliation mechanisms as practised by the Dinka and the Nuer have deep historical roots with a track-record of success in providing accountability and redress for atrocities committed. However, like all socially constructed human and societal agencies, it has not been spared from changes that have taken place over time such as the impact of colonialism, modernization, globalization, evangelism, political changes, and the militarization of society. Moreover, these procedures have not often been used to resolve modern conflicts or to address the legacy of past human rights violations. Whether local mechanisms have relevance and potential to address the atrocities of genocide, war crimes and crimes against humanity depends on their competence and how their

justice systems and judicial practices resonate or not with international human rights, humanitarian law, and judicial practices and standards. It is in this chapter that my research questions are expected to be answered. The questions are; what is the potential utility of local approaches to modern conflict in South Sudan? To what extent can the Dinka and Nuer justice and reconciliation mechanisms be applied to the current conflict in South Sudan?

The purpose of this study was to explore the ability of local approaches to resolve contemporary armed conflicts by critiquing the liberal peace approaches that, despite the growing interest in promoting local mechanisms, remains the dominant practice applied across a wide range of post-conflict settings. The critique of the liberal peace models has always been that of their failure to recognize local resources and mechanisms. When war ends proponents adopt the dominant discourse and meta-narrative about what to do in post-war environments. The practice of leading states and international policy makers to decide what is to be done about a specific conflict without significant local representation continues unabated. UN and other international documents and policies encompassing Agenda for Peace (1992) to Responsibility to Protect (2001) are indicative of this approach (Mac Ginty and Richmond 2013: 763).

I have critiqued the liberal peace theory and presented the limitations of local procedures in the theoretical chapter so that in this analysis chapter, I will look at their application, strengths, and weaknesses based on the interviewees' comments. Details of the limitations and possibilities of applying them to the case of South Sudan are discussed in the later sections of the chapter. When dealing with the Dinka and the Nuer communities during field work, the participants interviewed in the study recognized the relevance of local mechanisms, but they had reservations about their utility and efficacy in resolving modern conflicts. It is this empirical evidence that I have used to support, corroborate and refute claims about these mechanisms.

6.1 Customary versus International law

Customary and international legal systems owe their origins to different philosophical foundations and world views. While the international (retributive) justice system is based on statutory law and the Western world view, the local (restorative) justice system is based on customary law and the African world view. But tensions exist between the two legal systems mostly in relation to the standards and requirements of international human rights and humanitarian law. The main area of tension concerns due process in legal procedures and whether atrocities such as genocide, war crimes and crimes against humanity, can be tried by local courts or be amnestied as customary practices tend to do.

Trials in customary courts often lead to reconciliation that takes place to soothe the resentment between the litigating parties. The use of rituals to reconcile conflicting parties and their communities is an important feature of customary law (KI 10: 7/2/16).¹⁷⁵ As will be shortly discussed, this contrasts with practice under statutory courts where the court is not concerned with whether the disputing parties become reconciled upon the conclusion of legal proceedings. In addition to the customary post-trial reconciliation, some communities in South Sudan, including the Dinka and the Nuer, have specific rituals and ceremonies outside of the customary legal process for cleansing offenders and in recent years, combatants when they return to civilian life. The Dinka and the Nuer reconciliation rituals of sacrificing a white bull and sharing in the meal serve both as an end to hostilities, as well as a cleansing and re-integration of combatants and offenders (Ashworth 2014: 158).

The focus of local approaches as a respondent stated, is restorative justice, where they combine the elements of truth, accountability, compensation, and restoration of relationships, thereby prioritizing reconciliation over punitive justice (KI 1: 20/1/16).¹⁷⁶ Restorative justice's main principles are the victims' rights to have

¹⁷⁵ Interview 10, with a Nuer elder: (7/2/2016)

¹⁷⁶ Interview 1, with a lawyer: (20/1/2016)

crimes acknowledged and addressed and the perpetrators' rights to be integrated into the community. To help build fractured relationships, restorative justice employs various strategies, including hearings that are designed to be participatory, including both victims and perpetrators whereby the perpetrators acknowledge their wrongdoing and provide compensation and other reparations to the victims (Balati 2015: 7). Restorative justice considers that punishment alone is not enough to address past violations of human rights and to apportion justice to both victims and perpetrators. A respondent said, punishment may be necessary but should be administered in ways that enable victims and perpetrators to rebuild relationship both between individuals and throughout the entire community (KI 30: 9/3/16).¹⁷⁷ The overall aim is to help the victims heal, to make the perpetrators aware of the harm they have caused and to understand their duty to repair such injury, to prevent similar behaviour in the future, and to rebuild the self-worth and self-confidence of both the victims and perpetrators.

But the restorative approach is at odds with Western preferences for justice through prosecutions and punishment. The international community prefers international justice instruments such as *ad hoc* tribunals and ICC to punish and deter future offenders from violating human rights (Novak 2015). The view that prosecutions are the antidote to human rights violations was shared by a large majority of informants in this study (36 out of 43), who claimed that human rights abuses and atrocities committed in South Sudan in recent years have reached a magnitude never experienced before, and that the killings involved methods of fighting the war that are increasingly brutal and cruel. One informant commented, "The hurt is so deep and wounds still fresh that traditional approaches if applied can only be a temporary solution because the people who witnessed their loved ones killed or raped will not believe in reconciliation without justice" (KI 3: 27/2/16).¹⁷⁸ Another informant said that the impunity that has been allowed in South Sudan since the beginning of the

¹⁷⁷ Interview 30, with a Human Rights Lawyer: (9/3/2016)

¹⁷⁸ Interview 3, with a Nuer youth: (27/2/2016)

Sudan's civil wars in the 1950s needs to be addressed (KI 40: 14/3/216).¹⁷⁹ The views expressed here seem to suggest that the local system is not adequate and does not render justice, whereas in other views it does. The question is whose justice and what kind of justice? Local mechanisms render not retributive but restorative justice. Local system alone, based on these views cannot deliver the required justice that will deter future atrocities and deliver peace and reconciliation.

But what evidence is there that punishment can deter future offenders from human rights violations and lead to reconciliation? While prosecutions may be necessary, it seems there is no evidence to show that such interventions have reduced human rights abuses in civil war situations or that they have addressed the victims' problems. Atrocity crimes continue to be committed in various parts of the world despite the creation of criminal tribunals such as the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR): The ICC and the Special Court for Sierra Leone among others. Prosecutions focus on offenders and not on the victims of violations. A respondent asserted, "one of the significant criticisms of the ad hoc tribunals is that there has been no significant victim participation beyond some key witnesses" (KI 41: 17/11/16).¹⁸⁰ Incarcerations of offenders in this regard do not serve both the victim and community's interests for justice and reconciliation.

Restorative Justice methods, such as those of the *Mato Oput* in Northern Uganda, in many ways focus much more on engaging the victims (The Mato Oput Project 2009: 14). It takes the view that these people have suffered; and, as part of their rehabilitation, recovery and rebuilding, it is essential to include them in the process and not just to select a few of them for the very limited purpose of eye-witness evidence without testimony, but as stakeholders and partners in the process. These two situations are diametrically opposed and so there can be some significant

¹⁷⁹ Interview 40, with a Journalist: (14/3/2016)

¹⁸⁰ Interview 41, with a transitional justice practitioner: (17/11/2016)

tension between them. The friction point between the two types of justice lies in the different goals pursued by each justice system.

Despite this tension however, there are some examples of the complementarity of the two justice systems in South Sudan. The use of a dual legal system, as enshrined in the national constitution of South Sudan, where both statutory and traditional customary laws constitute legal practice, is evidently a recognition of the role the local justice agencies play in the judicial system of the country, where local initiatives appear to have a leading role in dispute resolution amongst most of the rural population. Statutory courts handle death (homicide) cases and once a case is concluded, traditional institutions and justice mechanisms take over from that point to administer the reconciliation process and rituals for reintegration as practised by the communities involved. One informant stated: “rural communities believe more in customary procedures than in statutory courts, because even if a homicide is settled in a formal court, it is not considered so by them until the traditional rituals of cleansing and reconciliation are performed by traditional experts (KI 2: 23/1/16).”¹⁸¹ This view indicates that the two could work together in cycle with the statutory court acting first, followed by the customary procedures or vice versa through appeals or referrals. Either way, the process is concluded with a traditional ritual of reconciliation. Another respondent, however, indicated that these two systems are not in harmony; “Sometimes in pursuit of advocacy for law you tend to run into red-tape to attain those goals and so there is a problem because this is a disharmonious bi-legal system which needs to be reconciled (KI 30: 9/3/16).”¹⁸² It seems that tension such as that between the local and the international approaches is frequently encountered in South Sudan, which questions the possibility of complementarity in transitional justice.

In terms of procedures, customary institutions are more flexible than statutory courts in that they allow for adjustments to accommodate changing circumstances to

¹⁸¹ Interview 2, with a Nuer chief: (23/1/2016)

¹⁸² Interview 30, with a Human Rights Lawyer: (9/3/2016)

society, as explained by the following example below: The fusion of gospel values, local conflict resolution practices and modern peacebuilding strategies in recent years such as the ones applied during the 1991 Wunlit peace conference (Ashworth 2014: 158), demonstrate not only the flexibility of local institutions and practices, but also the potential and possibilities of applying local strategies to modern conflict and transitional justice in a complementary manner. It is important to understand the complexity of customary legal systems, how they adapt to changing circumstances, and where they correspond to and diverge from international standards of human rights, rather than dismissing valuable practices simply because they are unfamiliar (UNDP 2016: 14). With the number of people that are typically involved in internal strife like that raging in South Sudan and subsequent human rights abuses, there is no way to achieve true retribution, because no statutory court can manage such enormous numbers of combatants.

6.2 Human rights violations and international law

Human rights violations and related abuses are at the centre of any transitional justice strategy. Most of the key informants interviewed for this study (27 out of 43) gave similar testimony regarding human rights violations in South Sudan. One participant, for example, said, “there is no respect for human rights principles, because human rights are an integral thing that begins with the right to life; when life has become so cheap, where people, especially journalists, are arrested, tortured, subjected to fear, hunger and death and when the government does things that are not acceptable by any international standard, then there is no respect for human rights” (KI 18: 11/3/16).¹⁸³ Another informant stated of: reports from the South Sudan Human Right Commission, the Panel of Experts commissioned by the UN Security Council, statements from Human Rights Watch and Amnesty International, have all documented serious violations of human rights and humanitarian law, that; “the situation is terrible” (KI 38: 16/3/16).¹⁸⁴ The same informant added that “these are

¹⁸³ Interview 18, with a member of a political party: (11/3/2016)

¹⁸⁴ Interview 38, with a European Diplomat: (16/3/2016)

not only credible reports, but factual reports¹⁸⁵ about the situation” (KI 38: 16/3/16).¹⁸⁶ In like vein, Johnson (2014b: 2) confirms that these abuses have been documented by independent investigations and are beyond dispute.

There may be a different understanding of human rights in South Sudan, but based on the above responses, conventional human rights principles are seriously violated, and it could be true to say in many local communities, real conventional human rights treaties are not being respected or observed. One informant commented, “It’s not that we have to “parrot” what the western world says about human rights, but if you consider our laws, whatever law is being formulated in South Sudan, if you read through it, you will be amazed at the things that are put there and you will be surprised if you check on whether this is being practised or not” (KI 25: 27/2/16).¹⁸⁷ He further insisted, “that is why you’re not seeing people going out and marching to protest to express concern or demonstrate about something; because the government security agents will crack down on protesters with a heavy hand” (KI 25: 27/2/16).¹⁸⁸ It is easy to say that, as impunity seems to reign in South Sudan, there is a need for the ICC to address this issue. But why is this the case? Below are outcomes of my analysis based on comments from my informants as well as a case study. Factors accounting for the lack of respect for conventional human rights include ignorance and a wrong perception of human rights, weak institutions of law enforcement and the impact of conflict.

First, there is a vague understanding of human rights and many people are unaware that it is misinterpreted. The main reason is that those in authority, who ought to

¹⁸⁵ South Sudan Human Rights Commission, *Interim Report on South Sudan Conflict, December 15, 2013-March 15, 2014*. United Nations Mission to the Republic of South Sudan (UNMISS): *Interim Report on Human Rights: Crisis in South Sudan*, 21/2/2014, and *Conflict in South Sudan; A Human Right Report*, 8 May 2014

¹⁸⁶ Interview 38, with a European Diplomat: (16/3/2016)

¹⁸⁷ Interview 25, with a peacebuilding practitioner: (27/2/2016)

¹⁸⁸ Interview 25, with a peacebuilding practitioner: (27/2/2016)

promote an understanding and respect for human rights, do not seem to be conscious of the concept because they have never experienced the existence of rights. The present leaders are a collection of armed people who are members of the SPLA or a composite of militia and other defence groups who have taken part in the fighting. In times of war, respect for human rights is downplayed because, for both sides, the goal is to win the war irrespective of the means used. Abductions, disappearances, arrests, torture and killings are commonplace; journalists are intimidated and told not to balance stories, newspapers are closed, opposition figures are locked up and permission is required from the security authority for any gathering or meeting of more than five people. One of my informants asserted, “when you begin talking about human rights, many people will consider you as somebody talking against the government” (KI 31: 10/2/16).¹⁸⁹ A negative perception of human rights has been created to intimidate anybody who would dare to criticize the system.

Second, weak institutions lead to a breakdown in the rule of law. Once this happens and the people take the law into their own hands, they start violating the constitution at will. Individuals do not see the police as the custodians of human rights because most of them are ignorant of such a concept. This is because military personnel who fought the liberation war, but are lacking in the relevant training and qualifications simply changed uniforms and appointed to top positions in the police. The question of human rights normally prevails only in situations where powerful systems exist.

The third concerns the current conflict. The 2013 eruption of hostilities marked the most horrendous violations of human rights in which initially there were targeted killings of men and women of Nuer ethnicity (Johnson 2014a). But when revenge dynamics kicked in, both sides of the war committed serious human rights violations. Rape was used as a weapon of war and most of those engaged in the fighting targeted women and killed innocent elders and children; a situation that forced many to seek shelter in the UN PoCs in various parts of the country, as IDPs or to flee to neighbouring countries as refugees. One informant reported, “The challenges of

¹⁸⁹ Interview 31, with a South Sudanese academic: (10/2/2016)

2013 were many. As a journalist and a human rights defender, I was rescued and taken to Uganda with the help of the European Union (EU) and the UN as I was destined to be killed for reporting the incident” (KI 26: 4/3/16).¹⁹⁰ Several informants and people I informally talked to reported comparable stories of abuse. It means that journalists and other activists who were not lucky enough to obtain help from such bodies as the EU and the UN were eliminated by the regime. So many journalists of many media outlets have been harassed, tortured and some of them killed, reported a respondent (KI 34: 14/3/16).¹⁹¹ With all this said, the pressing questions are; are local approaches capable of addressing these crimes? Does an international notion of human rights fit within an idea of local restorative justice? These questions are considered in the following sections of this chapter.

6.3 Local approaches and the impact of change

Local peacemaking and justice mechanisms were designed to resolve local and small-scale community conflicts such as homicide, diverse types of combat including spear fights, bodily injuries, psychological harm resulting from witchcraft and other forms of socio-economic and cultural disputes, such as marriage, land and other claims. The Dinka and Nuer local institutions and justice mechanisms were made effective by voluntary actions on the part of the perpetrators who surrendered themselves to the traditional authorities after committing homicide or other related crimes. The Nuer and the Dinka believed that if you killed somebody and you did not reveal it to the spiritual leaders, you or your children would die of a curse caused by the blood of the victim. A Nuer participant affirmed, “the Nuer who killed, came and declared that I or we have done this” (KI 2: 2/1/16).¹⁹²

To avoid revenge, killers came to their spiritual leaders; *Bany Bith* (Spear Master) of the Dinka or *Kuaar Kwac* (Leopard-Skin Chief) of the Nuer, to declare who they had

¹⁹⁰ Interview 26, with a Journalist: (4/3/2016)

¹⁹¹ Interview 34, with a Journalist: (14/3/2016)

¹⁹² Interview 2, with a Nuer chief: (23/1/2016)

killed lest their families suffered loss due to *cien* (a curse or an evil spirit) caused by the victims' blood. By extension, the curse could also affect those who knew what happened and failed to report it (KI 2: 23/1/16).¹⁹³ This was of course possible because most wars were between families, clans, communities or ethnic divisions. Identification of the victims and perpetrators was also possible in wars with neighbouring ethnic communities because group leaders knew all their combatants. The difference today is that modern conflicts such as civil wars are more complex and include different actors with different interests, some of whom may not be Dinkas or Nuers, to follow the practice. Even if they all happen to be Nuers and Dinkas, it would simply be too overwhelming for the spiritual leaders and traditional practice to handle, given the number of culprits.

Although it had the ability to tackle large-scale community conflicts, just like any other local mechanisms, Nuer and Dinka justice process was solely about homicide and a few deaths. Communities were used to engaging in local squabbles; and even though sections of the Nuer and Dinka are very big, the losses incurred were not of a magnitude experienced today because they did not have modern weapons. The use of traditional weapons of warfare, mainly spears and bows and arrows, restricted the number of deaths so that the traditional authorities could manage any loss resulting from these regional attacks. Casualties on both sides and the identities of the killers were easily established and reported to the chiefs during peace meetings and each side could mobilize and pay the required numbers of cattle as compensation according to custom and tradition. Families, extended families and relatives contributed cows for compensation since, because of their interconnectedness through the principle of *ubuntu*; they shared in the guilt of killing (Murithi 2006). With the death toll amounting to thousands and sometimes millions in contemporary armed encounters, such as the SPLM/A war that ended with the

¹⁹³ Interview 2, with a Nuer chief: (23/1/2016)

2005 CPA, and the one raging in South Sudan, the utility and application of this justice system would inevitably face serious challenges or find it impossible to cope.

The most recent cases, as discussed in chapters four and five, were the conflict between the Nuer of Nasir called the Jikanyi, and the Lou Nuer of Akobo, resolved at the 1994 Akobo peace conference; and the fighting between the Dinka of Bahr el Ghazal and the Nuer of Western Upper Nile, resolved at the 1999 Wunlit conference. The war claimed many lives; rituals were performed in which cows and bulls were killed in declaration of that covenant (Duany 2003; Myers and Shinn 2010). Given the overwhelming number of casualties, neither side asked for compensation but only amnesty. This is one clear example that gross human rights abuses and atrocities of the magnitude of Darfur or Rwanda may be beyond the capacity and capability of local justice mechanisms. Or perhaps amnesty is the answer.

While the Akobo and the Wunlit peace and reconciliation conferences were apparently successful, not all recent cases have been. The intra-communal disputes which erupted in 2010 between the Dinka of Twic East and the Ayuel counties of Jonglei state, where about 22 people were killed, is a case in point (KI 26: 4/3/16).¹⁹⁴ Despite efforts by traditional authorities and people from the Diaspora, no settlement had been reached at the time of field work. One participant suggested that, “the politicization of the case made it too complicated even for the government to find a solution to the problem” (KI 26: 4/3/16).¹⁹⁵ A case like that between the Twic East and the Ayuel confirms the assertion that the local mechanism had been weakened by politics and corruption. This is typical of situations where traditional authorities are induced to take sides, bribed or else manipulated because some of them are paid salaries by the government or their efforts are simply frustrated by elected representatives who see them as competitors in shared constituencies. In the following sub-sections, I will discuss some of the key challenges to possible

¹⁹⁴ Interview 26, with a local Journalist: (4/3/2016)

¹⁹⁵ Interview 26, with a local Journalist: (4/3/2016)

applications of local mechanisms to modern conflict and transitional justice in South Sudan.

6.4 Civil wars and disempowerment of traditional institutions and authorities

Many challenges exist regarding the application of local methods to civil war situations. The Dinka-Nuer inter-ethnic war fought within the overarching North-South civil war and which followed the 1991 split in the SPLM/A for example, undermined local efforts to resolve their differences. The ethnicization of the political conflict and the increasing brutality which was employed by both parties to the conflict prevented them from their traditional role (Hoehne 2008: 16). Traditional and spiritual leaders of both groups could not travel across country to settle conflicts between groups and conduct rituals. This is another example of how civil war or similar violent conflict can disempower and erode the capacity of traditional authorities. It was only through the initiative and facilitation of the Churches that Nuer and Dinka chiefs were enabled to come together and start the 1999 Wunlit peace process.

The war has generally had a significant impact on the people of South Sudan. Civilians and traditional authorities alike suffered from war and violence inflicted upon them by warlords, militias and government soldiers. Refusal or failure to assist guerrillas or to provide them with food, recruits or other resources was often the reasons for attacks (Hoehne 2008: 16). The harsh treatment reminded people of similar treatment by colonial and post-colonial external forces. These forces used traditional authorities for their purposes and very important in this regard was tax collection (Rolandsen, 2005:32). The chiefs collected tax mainly in kind and mobilized human resources. But failure to collect taxes or to provide young men as recruits for the army or guerrilla forces could result in severe punishment. Leonardi (2005: 13) observes that chiefs were also punished for crimes committed by their subjects and frequently the punishment had the aim of humiliating the chiefs in front of their communities. Badal (2006) cited in (Hoehne 2008: 17), observes that the loss of authority equally engulfed traditional religious leaders whose spiritual powers were questioned, for example, by rebels who demanded immediate 'rain making' in

dry seasons, and when the rain makers failed, the religious authorities were punished. However, the coercion of chiefs by guerrillas does not mean that guerrillas and traditional authorities did not cooperate or continue to share a similar belief system (Rolandsen, 2005:64-71).

War-induced displacement was one of the factors that undermined chiefly authority. The frequent installation of new chiefs by the people in IDP camps, the government and rebel movement in the respective territories has contributed to the weakening of the institutions and has led to a power struggle between the old and the new chiefs and their followers (Hoehne 2008: 17). The result was a conflict of loyalty after the return of the people and their chiefs to their original territory. Leonardi (2007: 541-43) asks; after the war, who is the real chief-the one who was deposed or fled or the one who replaced him? Moreover, the ease with which chiefs were appointed and dismissed by soldiers or guerrillas made a mockery of their office, Badal (2006) cited in (Hoehne 2008: 17).

A general loss of respect for traditional authority and values is still the main challenge in South Sudan. Young people with guns, for example, have become very powerful and they have their own leaders and do not respect traditional leaders. This is more the case with cattle camp youth in both the Dinka and Nuer ethnicities who provide the bulk of fighters in any clashes or raids; but who can also be the most uncompromising during community peacemaking. One informant asserted, “I don’t think traditional leadership has any longer a lot to offer; we need to recognize the new leaders, the youth leaders” (KI 25: 27/2/16).¹⁹⁶ This suggests that in the presence of young people who have wielded power through their guns, traditional authorities’ peacemaking role is weakened. This may also be a form of retaliation for the exclusionary practice by older men of youth and women through historical traditional arrangements that sometimes served their own interests. But the implications are great for the present and future roles of traditional authorities in

¹⁹⁶ Interview 25, with a peacebuilding practitioner: (25/2/2016)

peacemaking, as the loss of respect by traditional institutions at local level means that their application to modern transitional justice is even more problematic.

Another informant affirmed, “unless we actually bring back at least part of the powers lost by traditional society and make modern society believe that these traditional leaders are important and the rules are observed, we may risk losing all the good things of the past” (KI 31: 10/2/16).¹⁹⁷ When asked what needs to be done to reclaim at least part of the power and respect of the chiefs and elders, one informant observed that this is a long-term process. “I don’t see an immediate remedy because this is something which is to do with mind-set and conduct, and when you are addressing an issue relating to behaviour change, you need to be patient” (KI 31: 10/2/16).¹⁹⁸ It will take quite a long time to restore a moral order in a society such as South Sudan with a long history of dehumanization and trauma. These views do not just expose the impact of war on traditional institutions, but also on any post-conflict reconstruction and peacebuilding efforts. The agency of schools and cultural education, especially family is crucial.

The disempowerment of communities and traditional leaders by people with guns makes the code of behaviour which used to regulate societies before this war started no longer respected. One respondent accused politicians and military leaders of supplying the youth with money and guns; an act that leads to disrespect of traditional authorities.

“I think the big problem is that the youth are being manipulated by politicians and military leaders. It is much more difficult to influence young people for peace. You can go to the Cattle Camp Youth and talk to them and find the right ways of helping them to build peace amongst themselves, but then, a general or a politician comes along, offers some guns and money, starts telling them how bad the other people are, and especially because of the low level

¹⁹⁷ Interview 31, with a South Sudanese academic: (10/2/2016)

¹⁹⁸ Interview 31, with a South Sudanese academic: (10/2/2016)

of education of our people, it's just too easy for these big people to manipulate the small people and I think this is what we are seeing in the country at the moment; this is the real problem" (KI 25: 27/2/16).¹⁹⁹

This means that temporarily the chiefs and elders have lost or are losing their authority as only a few people listen to them when it comes to matters of war and cattle raids. I say temporary as opposed to permanent because despite the impact of the civil war and the change in the social behaviour of people, traditional institutions and local mechanisms for peacemaking appear to be relevant and may persist. But they will not go back to the kinds of influence they had in the past as they continue to come under both internal and external influences (Wassara 2007). Any effort to apply the mechanisms to transitional justice may require creative modifications. This is in line with social constructionist perspectives; where reality such as culture and practices are socially constructed and reconstructed to suit prevailing circumstances. There is a need to engage with these youth leaders to incorporate them into a new form of traditional leadership. The challenge in doing this means departing from the established traditional set-up, where membership of the customary leadership was exclusively reserved for older men, and that suggests a further weakening of the institutions that have been associated with the role of chiefs and elders, with age, wisdom and experience. However, this may be part of the modifications suggested above.

However, based on my field work observations, the manipulation of the youth by politicians and military leaders, the culture of the gun and the subsequent loss of respect for authority do not seem to be a permanent situation, but a war factor whose widespread effects include the government which has lost its monopoly of the legitimate use of force. South Sudan has seen many rebellions and insecurity, the proliferation of arms and armed groups leading to the dysfunctionality of the rule of law. This means that both the conventional and local approaches are affected. The situation may change when the war ends and institutional reforms, such as the SSR,

¹⁹⁹ Interview 25, with a peacebuilding practitioner: (27/2/2016)

including DDR of both combatants and civilians are conducted. But the end of war such as the one raging in South Sudan often introduces changes and in most cases permanent changes. Whether this will mean temporary or permanent disempowerment and loss of legitimacy for traditional authorities in South Sudan is a question that begs an answer. However, experiences from across Africa are instructive. For example, the role, influence and recognition of women in leadership and peacemaking at different societal levels have increased in recent years in countries such as Kenya, and after conflicts in Liberia, Rwanda and Sierra Leone (Harris 2013: 160). But the increasing role of women as discussed by Harris tends to pose a challenge to the patriarchy in countries across the African continent.

6.5 Tradition and Ethics of Wars and violations of Human Rights

Apart from the loss of power by traditional leadership, the recent human rights violations and atrocities committed as discussed above, and which continue in South Sudan demonstrate that some long-established values are being eroded. The killing of women and children, the mutilating of bodies and rape as a weapon of war that have been witnessed in South Sudan are not traditional. One respondent recalls that there used to be rules for fighting;

“a warrior can kill a warrior, a young man can kill another young man but you can’t kill women, children or old men. You can’t burn houses or crops, you can’t attack places like hospitals, churches or mosques where people have sought shelter; you can’t rape people”. He further said “The war can be stopped if a woman carrying a baby, for example, comes to intervene or if a man surrenders; if he throws away his spear, you cannot kill him. If you are about to kill a man and his wife comes and throws herself on top of him you can’t kill him, because now she has protected him” (KI 25: 27/2/2016).²⁰⁰

Similarly, Johnson (2014b: 11) argues that before the last century, warfare between South Sudanese communities tended to follow certain basic rules. Fighting was

²⁰⁰ Interview 25, with a peacebuilding practitioner: (27/2/2016)

between armed men. Women and children might be captured, but they, and the elderly were not the targets of fighting. These traditional rules of war have been lost in recent years. The question is why are these negative changes happening?

This could be partly explained in terms of the strategies and impact of the second South-North Sudan civil war, 1983-2005 between the SPLM/A and the Khartoum government; when both groups recruited militias in their controlled areas to fight on their respective sides. These militias and warring groups targeted communities who provided a support base for the opposing factions in the war. According to Johnson (2014b: 12), it was the Khartoum government's militia strategy specifically to attack the civilian support base of the SPLA where livestock was stolen, crops destroyed, and women and children were abducted or killed. To destroy the opponents' support base means to target communities, destroy livelihoods, homes and villages, humiliate them using rape on their women as weapons of war and enforcing displacement and migration.

The current war in South Sudan has taken these violations to a higher level where the sick in hospitals, people with disabilities and those who have sought shelter in churches and mosques have been killed: a situation which has now spread throughout the entire country as a way or form of revenge and retaliatory response intended to inflict on opponents as much loss and pain as possible. But this war is no longer between people of different races and beliefs hostile to one another; but among brothers fighting on the opposing sides, neighbours and people linked by intermarriage who will continue to live in mutual dependency after the war. Any attempt to apply local mechanisms to transitional justice may first need to re-appraise these lost values. This means devising a new way to work with the existing mechanisms not so much to respond to contemporary needs, but at least to make sure that all the good aspects of the old culture are not lost as new ones evolve.

6.6 Contemporary and traditional warfare

It has become difficult to make any clear distinction between traditional and modern conflicts in South Sudan in terms of the weapons used and casualties incurred. The

proliferation of arms in the hands of civilians has encouraged individuals and communities to ignore local methods of problem-solving as they can easily take the law into their own hands. This concern was raised by several respondents interviewed for this study. One of them cited the 2009 deadly conflict between the Lou Nuer and Murle ethnicities of Jonglei state where he said, “cattle-raiding turned into very violent attacks on villages where hundreds of civilians were killed or abducted. It was unlike traditional cattle-raiding which did not target people and property. The use of sophisticated machine guns encouraged this” (KI 27: 7/3/16).²⁰¹ The scale of loss in inter-communal conflicts was not as high and alarming as it is today, since primitive weapons such as spears, bows and arrows were used.

But targeting of civilians based on their ethnicities is not a recent experience in South Sudan. In 1991, following a split within the SPLM/A, which pitted the Nuer against the Dinka, innocent civilians on both sides were targeted which led to the Bor massacre (Johnson 2011). Furthermore, as I have discussed in chapter four, the new form of war which is now common in South Sudan and across other African countries is impersonal. The more impersonal the conflict, the harder it is to employ local forms of peacemaking and reconciliation, because the victim may never see the attacker, and traditional leaders on both sides find it more difficult to reach an understanding, find a solution, assess blame and determine appropriate compensation (Myers and Shinn 2010). Similarly, as observed by Hutchinson (2001: 314-5), the new interpretations of war morality among the SPLA forces and the Nuer civilians, which differentiates between government war and homeland war, where government wars are entirely devoid of the social and spiritual risks associated with deaths caused by more localized ‘homeland wars,’ is a challenge to local mechanisms.

The loss of the values from which local institutions and mechanisms draw their authority, because of war and external social influence, poses a challenge to the relevance and effectiveness of such approaches not only in dealing with modern

²⁰¹ Interview 27, with a South Sudanese intellectual: (7/3/2016)

conflicts, but also in attending to the local disputes for which they were designed. This raises the question as to whether local mechanisms are relevant to address such conflicts. But changes in the conduct of traditional warfare could also mean that there is a need to modify local strategies to respond to the situation in an appropriate manner and by so doing, we will also acquire the capability of dealing with modern hostilities.

6.7 Politics, chiefs and changing circumstances

The changing circumstances regarding the present status and role of chiefs have led to concern by some participants. The view that elected or appointed government chiefs and their council of elders (advisors) are less accountable to the communities has allowed for a lot of interference by the government in their roles. One respondent confirms this by saying “Tribal chiefs, in my view, have been compromised. They are no longer independent as they were” (KI 28: 14/3/16).²⁰² It seems this view is premised on the belief that, as chiefs are now government employees who are paid salaries, the institution has lost its independence and is being used to serve political interests. They are sometimes seen as partisan and no longer command the respect of the people, which is crucial for their roles. In the past traditional leaders did not have executive powers to enforce decisions, adherence to their rulings depended on the respect they enjoyed (Howell, 1954).

But the chiefs who were interviewed for this study see the situation differently, as one of them observed, “we are being victimized by both sides but we are doing our work though we are aware that many things have changed. The people we represent accuse us of being government agents and the government criticizes us for serving community rather than government interests” (KI 21: 22/6/16).²⁰³ This resonates with the observation of Leonardi (2007: 552), that if a chief becomes too close to the government/external power he loses legitimacy among his own people. She argues

²⁰² Interview 28, with a Dinka elder: (14/3/2016)

²⁰³ Interview 21, with a Dinka chief (22/6/2016)

that the leaders ended up in the “cross fire” between external powers and their own people in the process of mediating the needs of both. Bargaining has been the role of chiefs through colonialism, post-colonialism and war (Leonardi 2007: 540), and in this case she suggests that authority derives from the capacity to communicate with sources of power, not from possession of power itself (Leonardi 2007: 551). This means that the chiefs had to develop good working relationships with the powers in their respective locality, and to balance between providing for the needs of their people such as defending them against abuses and interference as well as the needs of the government and/or guerrillas.

Traditional authorities also face the challenge of competition with elected representatives regarding their legitimate control over their constituencies. Another respondent commented “I don’t believe local mechanisms will work because here we have a presidential and a parliamentary system and the judiciary. There is no way traditional authority will grow because a member of parliament of that constituency claims to be the representative of the people” (KI 28: 14/3/2016).²⁰⁴ Commenting on the competition between chiefs and parliamentarians over their constituencies, a respondent said, “when it comes to reconciliation, politicians think this is an opportunity to make money. They will try to confuse the entire process and influence their communities so that the role of the traditional leaders is watered down. So, interference from politicians is a big problem” (KI 27: 7/3/16).²⁰⁵ The view suggests that once politicians take the lead, they will influence their people to act to serve their political interests. At the end of the day it becomes a failure because the objective of the process which is to reconcile warring communities will not be achieved. This is a challenge as well for any efforts to apply local strategies to modern conflict.

In the past, communities sat down to resolve even murder cases amicably and it broadly worked. As an example, one respondent cited the 2012 land conflict between

²⁰⁴ Interview 28, with a Dinka elder: (14/3/2016)

²⁰⁵ Interview 27, with a South Sudan intellectual: (7/3/2016)

the Madi and the Acholi in Eastern Equatoria State which claimed more than 20 lives saying, “without the involvement of the politicians that issue would have been resolved without bloodshed. But the involvement of politicians kept this issue unresolved to this day” (KI 27: 7/3/16).²⁰⁶ There are similar experiences in other parts of the country where committees were formed to investigate and resolve disputes but these remained unresolved because the issues had been politicized. Among other examples, a respondent cited, the land disputes between the Bari and the Mundari in Mangala; between the Bari and the Nyangwara in Kuda, amongst the clans of the Pojulu tribe in Wonduruba and the one which involved four tribes around Kit; Acholi, Madi, Bari and Lulubo (KI 13: 4/2/16).²⁰⁷

The politicization of differences over land often relates to the economic and political interests of politicians who see land in terms of investments (KI 31: 10/2/16).²⁰⁸ A common view of those I have informally interviewed is that politicians tend to see land in terms of expanding their constituency since, acquiring more territory translates to possibility of creating grassroots administrative units and the appropriation of voters. This is yet another indication that the role of traditional authorities, as custodians of land and community property in South Sudan, has been negatively affected by politics. Political manipulation seems to be one of the most crucial factors behind tribal conflict in South Sudan. Ashworth (2014: 160) affirms that this highlights a dynamic which the Church had always been aware of: that while ethnic conflict often has its own roots, it is manipulated and exacerbated by political and military interests.

But modern conflicts to which we wish to apply local mechanisms are politically motivated, and they tend not to fit in very well with local traditions guided by customary law. Most elements of the local system are created in a coherent way so that things simply flow freely, and whoever attempts to deviate from the route is

²⁰⁶ Interview 27, with a South Sudan intellectual: (7/3/2016)

²⁰⁷ Interview 13, with a justice and peace official: (4/2/2016)

²⁰⁸ Interview 31, with a South Sudanese academic: (10/2/2016)

challenged by the traditional authorities and threatened by curse (KI 17: 12/2/16).²⁰⁹ But in politically motivated cases, these become difficult to handle, because they involve instigators, perpetrators and victims and some victims on occasion become perpetrators. This is clear from the recent conflict in South Sudan where victims turned into perpetrators and where the dividing line became blurred. For example, about the 2013 hostilities, one informant claimed, “in Upper Nile state, the Shilluk people were first victims of the Nuer and later of the Dinka, and finally they themselves also became perpetrators”(KI 25: 27/2/16).²¹⁰ This could pose a big challenge to the traditional process which, though it may be flexible, may not be conversant with the dynamics of modern politics. But what do these challenges mean for the future of local institutions and mechanisms in South Sudan?

Several informants (24 out of 43) have acknowledged the changes that have happened but affirmed that chiefs and elders are still peacemakers. One of them added, “I think local mechanisms have potential for application to modern conflicts, we only need to research and develop them further and practice them” (KI 27: 7/3/16).²¹¹ That they still exist despite the long history of hostilities and change, means that there are ways by which they are resolving conflict and maintaining peace. My interviews, both formal and informal, with several people during the fieldwork revealed that most people in South Sudan tend to see the greater potential of local peacemaking based on African philosophy, because the Western approaches, still widely used, are not necessarily conducive to every conflict situation. But there is a need for gender fairness in the local approaches.

6.8 Local justice and international legal standards

Local forms of justice are designed to deal with relatively small numbers of cases: ordinary or daily criminal and civil disagreements both large and small and not those

²⁰⁹ Interview 17, with a civil society activist: (12/2/2016)

²¹⁰ Interview 25, with a peacebuilding practitioner: (27/2/2016)

²¹¹ Interview 27, with a South Sudanese intellectual (7/3/2016)

arising from large-scale wars. Do they have the capacity to restore years and sometimes decades of abuses? Can they bear the weight of the most serious crimes? The problem in answering these questions is that there are yet only recent experiences of restorative justice being implemented in post-conflict situations. The most ambitious manoeuvre which has also attracted lots of criticisms, so far is the re-modelling of the *gacaca* tribunals in Rwanda with the aim of speeding up the prosecution of suspected perpetrators of the 1994 genocide. This increased the participation of the population, and introduced elements of mediation and reconciliation into the process (Freeman and Hayner 2003: 113).

The continuous failure of international justice systems to address the bitterness experienced by war-affected communities in Africa and the global South in general when war ends, and the sources that generate it, are the reasons for seeking complementary schemes that are founded on the histories and cultures of conflict-affected communities which might prove to be appropriate methods. According to Alai (2012: 128), some communities have opted to adopt local justice procedures, such as the Timor-Leste Commission for Reception, Truth and Reconciliation (CAVR), the Rwanda *gacaca* courts, and traditional cleansing ceremonies such as the *Mato Oput* in Northern Uganda, among others. While these initiatives make their vital contribution particularly in dealing with offences at community level, they face several challenges regarding maintaining international standards.

An informant underscored the limitations involved in the use of local procedures in the transitional justice processes. She acknowledged that South Sudan had a lot of mechanisms that are still being used. However, she insisted, “this is good for local things where for example, you have conflict between cattle owners from the Lakes State destroying farm areas in the Equatoria region, or cases where cattle have been stolen and one or two persons were killed, then you can use it” (KI 38: 16/3/16).²¹² But “when you talk about SPLA officers, for example, she further stated, committing atrocities that involve a lot of people as part of their current structure or if it involves

²¹² Interview 38, with a European Diplomat: (16/3/2016)

people in formal decision-making, I don't think you can use it" (KI 38: 16/3/16).²¹³ There are limitations and these depend on the kinds of atrocities committed. Similarly, a different informant asserted "back in the colonial period, they had a system of measuring customary law against three criteria, the last of which being if a crime is sufficiently bad then some sort of universally-accepted law needs to be applied. But for something that is at the level of a dispute about cows, some form of restorative justice or customary laws could be applied" (KI 39: 16/3/16).²¹⁴ It seems part of the answer to the application of both legal systems is the hybrid court provided in the ARCSS, which I will discuss in a later section. But how justice works is unclear.

Apart from the critical voices of sceptics, uncertain of the mechanism's usefulness in the South Sudan situation and their capacity and effectiveness to generate sustainable peace given the magnitude of the conflict, in which thousands of civilians have been killed, raped and maimed, other challenges exist. The concern among international lawyers and among international Human Rights NGOs, such as Human Rights Watch and Amnesty International. These organizations accept no curtailment of the international obligation to put someone on trial, and argue that customary tools do not respect the duty under international law to prosecute mass atrocities (Allen and Macdonald 2013: 16). Equally, Human Rights discourse does not usually allow justice against whole sections of people as local justice sometimes does: for example, the granting of amnesty to entire communities of Bahr el Ghazal Dinka and the Nuer of Western Upper Nile during the 1999 Wunlit peace conference (Bradbury et al 2006: 36), only against individuals. While local rituals and customs are important for populations caught in a violent conflict and dealing with its aftermath, those local rituals and customs do not form a coherent alternative to formal national and international processes. Thus, local justice cannot be harnessed to the transitional justice agenda in a straightforward way (Allen and Macdonald 2013: 21).

²¹³ Interview 38, with a European Diplomat: (16/3/2016)

²¹⁴ Interview 39, with a European Diplomat: (18/3/2016)

Local methods have not previously been applied in the context of mass atrocities and therefore lack the capacity to address gross violations such as sexual slavery (Alai 2012: 129). While many of the elements of war crimes are the same as those committed outside of war situations, such as murder and rape, the motives and gravity of the offences are often very different in the context of war. Local justice practices do not appear to be designed to address crimes in which only the victim or only the perpetrators are known, a common reality for many of the communities who have suffered losses during contemporary conflicts (Komakech 2012: 74).

But is this challenge unique to local interventions? Apparently not; It equally applies to international justice interventions. Retributive justice mechanisms such as the ICC, for example, cannot both prosecute and conduct trials in situations of mass killings where individual killers cannot be identified. The idea of command responsibility where an area commander is prosecuted for human rights abuses committed in his jurisdiction instead of unknown perpetrators could have been a pragmatic attempt to respond to this dilemma. But mostly it is not, because chains of command in African conflicts tend to be opaque and undocumented. Moreover, logistically and practically it is impossible to prosecute all those who are suspected of committing genocide, war crimes and crimes against humanity in a conflict of the magnitude of South Sudan with multiple armed actors involved. The case of the Rwandan genocide, for example, illustrates how backlogs of cases prompt the reintroduction of the traditional mechanism of '*Gacaca*' to expedite dealing with the cases (Waldorf 2010: 186).

Justice in the courts is usually the first and most prominent of demands, but also the most difficult. Many attempts to prosecute and punish those responsible for serious abuses under prior regimes have seen little success. Typically, as in El Salvador, South Africa, and Chile, the political transition has involved political compromise, and these compromises have included some form of immunity from prosecution for the repressors of old, perhaps even preserving some of their power or incorporating them into the new government (Hayner 2002: 12). Despite what are sometimes the best intentions of the new authorities and despite a pressing demand for justice from

victims and human rights advocates, post-conflict justice is rare, except in the case of the victor's justice. Where there are trials, they are usually few and sometimes fail to convict even those who everyone knows are guilty (Hayner 2002: 12). In South Africa, none of the security and police officers who were responsible for the most horrendous abuses during the apartheid regime, were prosecuted, despite being denied amnesty by the Amnesty Committee of the TRC.

6.9 Local Mechanisms: Application, strengths and weaknesses

Local methods of peacemaking in South Sudan conform to the notion that conflict resolution and reconciliation mechanisms revolve around mediation, arbitration and compensation and sometimes amnesty, though these differ in application from one society to the other. In this section I will discuss the key components of local mechanisms practiced by the Dinka and the Nuer.

6.9.1 Mediation

Mediation is the most commonly used method of conflict resolution and local justice in South Sudan and is based on customary law. Though mediation approaches may vary between the international and the local in that the former is based on liberal theory and assumptions and the latter on the African philosophy of peace and customary law, there are similarities in the general understanding of the concept. Both approaches converge in three areas: first, that mediation involves actors in a conflict and a neutral third party (an individual, a group, and an organization) and/ or a state; second, it tackles issues underlying the conflict; and third, it comes with resolutions that address the disputes. This means that mediation is a process of conflict management which relates to the parties' own negotiations, where those in conflict seek the assistance of, or accept an offer of help from an outsider to resolve their differences without resorting to physical force or invoking the authority of the law (Bercovitch and Jackson 2009: 34).

The local mediation process in South Sudan most often takes the form of informal judicial procedures where guilt is apportioned and compensation and reparations exacted according to customary law. Where adjudication is necessary these

traditional authorities act both as mediators and judges by simply switching their roles. But as discussed in chapter five, traditional authorities have no executive power to enforce their decisions and rulings except for the use of a curse. This means that those who are either unwilling or unable to abide by the decisions could defy the rulings. Among the Dinka, for example, when killing happens, the offender generally hides or goes to another tribe for shelter, and his family tries if possible to arrange a peace (KI 9: (7/2/16)).²¹⁵ Sometimes these efforts go without success until the culprit is brought to explain the murder's account and ask for forgiveness.

Another concern relates to the local mediation process which must include all the relevant actors, as reconciliation would otherwise only be between the perpetrator and his victim and their communities. This could be a problem in the case of the South Sudan civil war where the dispute has also pitted the government against certain ethnic communities or sections of the population. Traditionally there is no clear framework that can be constructed to include the government as a party to the conflict.

6.9.2 Procedures:

There are different scenarios where mediation is initiated. The first by neighbours who see certain kinds of violent conflict as disturbing and which could affect peaceful coexistence. The second is by the parties themselves who take the initiative to negotiate and to reach out to traditional leaders for assistance to have their differences peacefully settled, and the third is where respected elders offer themselves to mediate by deciding to voluntarily intervene, summon the parties in conflict and mediate.

The nature and magnitude of the conflict determines how mediation is initiated. Most of Dinka and Nuer key informants separately interviewed by this study stated that before the two decades of the South-North war, there was little direct involvement of

²¹⁵ Interview 9, with a Dinka elder: (7/2/2016)

the government in local conflict resolution and reconciliation. They claimed that the situation has changed so that now state governors or government officials in their full capacities initiate community reconciliation and ask the traditional authorities to mediate. Jonglei state particularly, seems to offer several examples of government-initiated local conflict mitigation processes. One respondent explained, “it is the government-initiated local mediation processes that provide the space where manipulation and politicization of local peacemaking and justice systems mostly takes place” (KI 26: 4/3/16).²¹⁶ But these initiatives have always been political, because local conflicts are fundamentally about politics of community, land, power, space, and access among others. The role of the government remains crucial for the following reasons: to provide security and protection in a situation where tribes used heavy weapons in their fighting and present a problem much greater than the ability of traditional authorities to control; to provide logistical support for the mediators and participants; to serve as guarantor for the implementation of the agreement reached (Gado 2013).

6.9.3 Compensation

The role of compensation for losses incurred is crucial in any local peacemaking and justice systems among the cattle-keeping and Nilotic communities of South Sudan, more so when considering the subject of reconciliation. Compensation and restitution are significant among the Dinka and the Nuer in their efforts to repair harm caused to lives, property and relationships. As reported by most of my informants (31 out of 43), the payment of cattle as compensation for human lives has been in practice among the Dinka and the Nuer for centuries. One of them said, “fighting is not a recent thing; within our own communal settings, these fights have always been there, but there have been ways in which we deal with this: through compensation, truth and reconciliation” (KI 30: 9/3/16).²¹⁷ This would aid reconciliation and, like reparative justice, which has become so central in any transitional justice efforts,

²¹⁶ Interview 26, with a local Journalist: (4/3/2016)

²¹⁷ Interview 30, with a Human Rights Lawyer: (9/3/2016)

could provide a level of solace to those who suffered in the conflicts. The restorative value of such exchanges also re-establishes peaceful relations and removes the need for revenge killing.

The payment of blood price in both the Dinka and Nuer communities also serves a cultural purpose: that of restoring the loss of reproductive resources (Leonardi et al. 2010: 65). But the overemphasis on marrying a ghost wife to the deceased tends to overshadow care for the family of the deceased. This means that if local compensation for loss is to be equated to reparations in transitional justice which is intended to restore the original state of the victims or survivors by repairing the loss and damages due to violations, then the Dinka and the Nuer compensation does not seem to serve the purpose. This is a point of divergence from modern transitional justice which needs to be considered if local solutions are to be applied to modern conflicts.

Despite their cultural, social and economic values, there are challenges regarding the application of this approach to large-scale violent conflicts or war situations where many people have lost their lives and where it is hard to establish who killed whom and to pay compensation. When asked, what can be done in these situations, an informant commented that compensation, as traditionally understood, would be impossible to enforce for several reasons: first, in many instances, people do not know the identities of the victims and perpetrators. Thus, even if compensation were possible, it would not be easy to determine who would compensate whom. Second, certain cases are peculiarly complicated such as where victims have become perpetrators (KI 30: 9/3/16).²¹⁸ Wasonga (2009: 37) observes that a perpetrator may have been forced to kill his or her parent or up to ten people like the case of the LRA in Northern Uganda; in such instances compensation, may be difficult to apply. Most respondents (28 out of 43) insisted there should be no compensation. One of them stated “so many people have been killed in the ongoing war, there is no way people can afford to pay *puk*. The destruction has left people without anything they had

²¹⁸ Interview 30, with a Human Rights lawyer (9/3/2016)

before. They are now in displaced camps and others have fled to neighbouring countries” (KI 14: 19/2/16).²¹⁹ Despite the above obstacles, individual compensation, however complicated it may be, can be crucial for facilitating reconciliation.

However, some participants believe that the institutions and systems will continue with their moral strengths and roles despite the impact of changes; hence their potential and possible application to modern warfare. Commenting on the relevance of blood price among the Dinka, for example, one respondent noted, “Yes, payment of *puk* is possible; even recently our chief participated in solving the problem of the Apuk and Aguok communities in Gogrial, where more than 20 people were killed and the killers paid about 2,000 cattle for the number of people they killed in Aguok; each victim was compensated with 31 cows” (KI 5: 20/2/16).²²⁰ It seems this informant’s belief in the efficacy of the mechanism, despite serious potential challenges in its application to contemporary conflicts, is based mainly on normative imagination. However, this practice is not sustainable in a situation of mass killings, the kinds we have seen in South Sudan in recent years and across some African countries.

Another respondent cautiously affirmed that blood compensation could be applied, but it might take a long time to settle such a payment (KI 22: 20/2/16).²²¹ What she did not talk about was whether, unlike the case of community or inter-communal conflicts, the number of those killed and the identities of their killers could be ascertained if, for instance, they were killed by a war plane, artillery bombardment or tanks. Rather she emphasized the kind of creative approach to negotiations that focuses on identifying root causes of conflict to apportion blame and payment or not of compensation: in other words, it is essential to consider who is right or wrong, so any compensation would depend on culpability. Again, her reference here seems to be to individual or communal disputes and not civil wars with their complexities of motives and actors. Another respondent argued that native methods are still relevant

²¹⁹ Interview 14, with a Dinka chief: (19/2/2016)

²²⁰ Interview 5, with a Dinka woman: (20/2/2016)

²²¹ Interview 22, with a Dinka woman: 20/2/2016)

and can be applied to modern disputes, specifically at the community level, because they are tradition-based and well understood by the affected people; but payment of blood price is irrelevant in terms of the great challenges to establish the perpetrator's and victim's identities and to mobilize resources (cattle) for such a payment (KI 2: 23/1/16).²²² He suggested, in relation to the current war, that the government should take full responsibility since it was politics that ignited the war in the first place.

The role of the government was emphasized by most respondents. One of them said that the government should make reparation in the form of community projects for those most affected by the strife and violations; there should be restitution instead of compensation (KI 29: 19/2/16).²²³ However, contrary to this view, Komakech (2012: 73), argues that restitution might fulfil the purpose of compensation, which is intended to address the economic impact of an abuse, but may not be able to address the reconciliation process at a local level. In that regard, one informant maintained, "compensation and reparations should be provided by the government; traditional authorities should conduct cleansing and re-integration rituals to bring about healing and communal reconciliation" (KI 5: 20/2/16).²²⁴ This is considered a better option (complementarity) because of the complexities associated with modern conflict, in terms of the multiple actors involved, the severity of abuse and their impersonal nature.

The obvious other source of reparations would be the international community. In Sierra Leone, the UN funded some of the needs as the government said there were other priorities that needed more attention (Graybill 2017). The challenge with this is that if reparations are internationally supported, then there is no acknowledgment of violations by the government. Again, how does that resonate with traditional requirements that perpetrators and their clans should share responsibility by mobilizing resources? This raises another basic challenge regarding the

²²² Interview 2, with a Nuer chief: (23/1/2016)

²²³ Interview 29, with a Dinka woman: (19/2/2016)

²²⁴ Interview 5, with a Dinka woman: (20/2/2016)

appropriateness of traditional justice practices as far as the payment of reparations is concerned. Should it be material or symbolic compensation? How about communities, given that the focus of restorative justice falls on both the victim and the perpetrator as well as their communities? To what extent can financial reparations repair communities? The numerous challenges discussed above, necessitate the exploration of the idea of 'symbolic compensation' or some kinds of affirmative action policies involving the communities most affected.

Based on the challenges discussed above, community reparations are probably better, so that if the providing of free educational opportunities to victims is part of that, all the children of the affected community can attend school. But a distinction will need to be made between what constitutes development and what constitutes reparations. In such situations, reparations may not necessarily need to be material: money or cattle. According to Ogora (2009: 8), community reparation can take various forms including: the construction of memorials in places where mass killings or massacres occurred; starting up micro-finance projects for the survivors of the conflict in order to enable them to sustain a meaningful livelihood; the construction of rehabilitation centres where victims can receive treatment; the construction of museums or community memorial centres in IDP camps in memory of those who died; and the funding of commemorative events in local communities. A reparation fund would also provide for key rituals which could be helpful for fostering reintegration, community cohesion and solidarity. But the pursuit of individual compensation can be a complicated matter because of the costs involved and difficulty to define who qualifies as a victim and who does not. The challenge of applying local mechanisms in a complex situation such as this means that transitional justice requires a complementary and holistic approach rather than using only one or two initiatives like South Africa.

Symbolic reparation in the form of an apology could be another option. President Mandela expressed regret to the nation for the crime of apartheid in South Africa. Paul Kagame of Rwanda apologized for the crime of genocide. President Uhuru Kenyatta expressed regret for the 2007 post-election violence in Kenya. The

President of Sierra Leone begged forgiveness for the war and the gross violations of human rights and was applauded, unlike his predecessor (Graybill 2017). Apology is about nation building not about crimes committed by the individual head of state. It is about the recognition of victims and this can be more powerful especially when it comes from those who have benefited from previous regimes.

With these difficulties identified, should these approaches be confined to local communities or applied alongside modern Western strategies? According to Ogora (2009: 9), the trouble is not about the limited applicability of the local justice system, but that many of these local mechanisms are presented in their 'ancient' and 'archaic' formats as they used to be practised in the past. He argues that except for a few experiments such as the *gacaca* in Rwanda, many African cultural procedures have not been adapted to suit contemporary situations and conflicts. He further argues that because modern military encounters involve phenomena unfamiliar to local communities, such as 'crimes against humanity', war crimes' and 'genocide', the obvious conclusion is that these novel outrages must be beyond the capacity of local mechanisms. For Clark, the challenges, critiques and controversies regarding local techniques such as *gacaca* demonstrate that local methods can indeed be restructured to handle contemporary crimes and transitional justice needs (Clark 2014). These views resonate with several comments made by informants in this study who suggest that if local methods are to be applied to modern hostilities and transitional justice, they will require some modifications in both methodologies and practices.

Modifications may be possible with socially constructed efforts, but a great deal of imagination and creativity will be needed if local forms of justice are to be reframed for use in the context of massive atrocities, such as genocide or prolonged human rights violations. Every initiative will have to take an uncharted path. Moreover, as discussed above, most recent developments in the international environment involving the UN, large NGOs, and civil society organizations almost exclusively favour retributive institutions, such as ad hoc tribunals, the ICC, universal jurisdiction

and so on. This one-sided approach discourages experiments to develop a restorative approach (Freeman and Hayner 2003: 114).

6.10 The Church and traditional authorities

As a civil society actor, the Church in South Sudan has been playing a vital role in peacebuilding efforts since before, during and after the decades of war in the country; through advocacy, mediation and reconciliation as well as humanitarian and development services. It has a record that includes working closely with other international and national actors as well as traditional institutions and authorities. One informant claimed, “the Church has always been at the forefront of peacemaking and reconciliation in South Sudan. Apart from its moral authority, its grassroots reconciliation efforts have been possible because South Sudan is still a very rural and religious society” (KI 32: 15/3/16).²²⁵ Through the close collaboration between the Church and traditional authorities in 1990s as discussed in chapter four, PPP as a new model of local peacemaking was invented. The processes and procedures are like the ‘palaver hut’ conflict resolution and reconciliation meetings that are common in most rural communities across African countries (Omeje 2008).

But how and why was the process facilitated by the Church? Traditional authorities lack the national structure to accomplish such a task throughout the whole country, so the Church provides that structure. But in each local area it is the traditional leadership who are the ones who must make things work. One respondent said; “the PPP is made possible because first, the church is an institution that is nation-wide. Second, the church has the trust and credibility to do that, as the power of the chiefs and elders is local and they don’t have national associations of chiefs” (KI 25: 27/2/16).²²⁶ Traditional leaders were the main actors in the entire process as they were the ones who had to agree on the agenda and procedures. Thus, it has been recognized as a model of grassroots peacemaking and has become a trend that

²²⁵ Interview 32, with a Pastor: (15/3/16)

²²⁶ Interview 25, with a peacebuilding practitioner: (27/2/2016)

continues to be used across the country (Ashworth 2014: 164). It seems many of such conferences were held since 1990s to reconcile communities in conflicts.

In their comments about the potential of local mechanisms to be applied to modern conflicts, most informants interviewed by this study referred to the Akobo and Wunlit peace and reconciliation conferences that were conducted in 1994 and 1999 respectively, where different approaches converged: the gospel values, traditional peacemaking practices and the modern peacebuilding model (Redekop 2007; Ashworth 2014). The model maintained the peace between the Dinka and Nuer communities until new antagonisms erupted. Again, through its strategic linkages PPP also produced outcomes that contributed to the efforts that led to the signing of the 2005 CPA (Ashworth 2014: 59).

The success of the conference was partly because the SPLA provided security and protection for the participants during the entire period. But could the conference have taken place with the same degree of success without the support of the Church and the SPLA security forces? Perhaps this question leads to a criticism of the PPP model as a new form of local approach because its dependence on the government for security and implementation of the recommendations could create another opportunity for political manipulation. But could this provide the basis for future complementarity with the modern transitional justice framework? It appears that this is already a good beginning where different values and strategies as well as different actors, local, national and international, converge.

Again, how was the process different from the well-known local process as practised by the Dinka and the Nuer? One clear difference was the role of women and youth. The participation of women was crucial because part of the PPP principle was that one third of the participants were women; usually elderly women, women who were respected (Ashworth 2014). The traditional chiefs and elders and women were part of the planning process. In this respect, the PPP scheme departs from tradition in a significant way, because it involves women and youth who were historically excluded from such processes. In the past, women and youth were not part of traditional peacemaking or at least did not play key roles such as planning the proceedings. As

argued by Graybill (2017: 148) in the case of the Sierra Leone TRC, this deviation addresses criticisms that disapprove of local methods of conflict resolution when they do not adapt to respect the rights and agency of women and youth. This also resonates with the observation of Wassara (2007) that traditional institutions and local mechanisms for peacemaking appear to be relevant and may persist, but will not revert to the kinds of organization and influence they had in the past.

6.11 Transitional Justice and the 2015 Peace Agreement

The signing of the Agreement on the Resolution of the Conflict in South Sudan (ARCSS) which was brokered by IGAD in August 2015, between the SPLM-IG and SPLM-IO, temporarily ended the conflict which started in December 2013. Unlike the previous agreements discussed in chapter three; the 1972 AAA and the 2005 CPA, ARCSS included a transitional justice component. It dedicated a whole chapter (5) to Justice and Accountability to deal with violations committed between 2005 and 2015, and to seek the truth about the causes and impact of the conflict as well as to provide reparations and compensation to victims and survivors of the violations. To that end, three transitional justice institutions were to be established: The Commission for Truth, Reconciliation and Healing (CTRH); the Hybrid Court for South Sudan (HCSS); and the Reparations and Compensation Authority (RCA). Based on interviewees' comments, this section will analyse the three institutions in relation to the Dinka and the Nuer local justice and reconciliation practices.

In proposing and focusing on only two non-judicial transitional justice mechanisms: The CTRH and the RCA, ARCSS omitted the local justice and reconciliation approaches and the role of religious bodies that are crucial to the South Sudan context. This is not surprising, given the influence of liberal peace agents such as the UN, the Troika and other international actors who, despite being IGAD-led have financed and backed the peace process. These bodies promote retributive justice and non-judicial mechanisms that are based on the Western liberal approaches to transitional justice: ICC or Hybrid tribunal, TCs and associated mechanisms such as reparations. Harris (2013: 155) observes that regarding Western donor influence in Sierra Leone, in such scenarios, there is a wider argument that the concerns are

those of the donors which, despite some variation in emphasis are all current liberal concerns that align with democratization, accountability, human rights, the promotion of civil society, economic liberalization and good governance. This section aims to understand whether possibilities exist to combine the three modern mechanisms proposed by ARCSS with local strategies. I now turn to discuss the possible role of local approaches in relation to each of the three institutions.

6.11.1 Commission for Truth, Reconciliation and Healing (CTRH)

The CTRH will be responsible for investigating, documenting and reporting on human rights abuses over a predetermined period to address the legacy of conflict, as well as promoting peace, national reconciliation and healing. The hypothetical relationship between the CTRH and customary institutions may be a complex one, but it potentially offers unique advantages in the South Sudanese context. Possible difficulties may arise from the diversity of local systems in South Sudan, and the challenges discussed above that have negatively impacted on customary institutions throughout the different periods of South Sudan's history. This is in addition to the inherent weaknesses of the institutions, including certain customary laws that discriminate against women and girls.

However, since they are far more accessible geographically, established institutions in South Sudan could play a key role in extending the CTRH's reach to rural parts of the country. Traditional authorities also have hands-on knowledge of the facts and circumstances of the conflict, including the nature and extent of damage done, materially or psychologically, which could provide a rich source of data for truth-seeking efforts (UNDP 2016). The CTRH could set up a truth-seeking branch at the level of traditional leaders and their communities. The customary system encourages the accused person to tell the whole truth about what they did; especially important is the truth concerning the motivation and circumstances under which the offending action occurred, which is used to determine whether the sentence ought to be mitigated or not (UNDP 2016).

Various views were expressed by the participants as to preferred approaches to national reconciliation in South Sudan. About half of the participants said that if the CTRH followed the model of South Africa it could lead to reconciliation. One of them proposed “the process needs to include truth-seeking, apology, compensation, reparations and forgiveness; but with the heavy presence of the international community and the involvement of the grassroots” (KI 27: 7/3/16).²²⁷ Another informant further remarked, “the reconciliation and healing process must be undertaken by bodies that enjoy the confidence of all communities: the churches, civil society and the NGOs” (KI 18: 11/3/16).²²⁸ These positions confirm the view that reconciliation is a multi-faceted process with several layers and multiple actors across the board. The reference made to the presence of the international community in the process is indicative of the importance of complementarity of approaches.

But a locally led TC could perhaps generate more information than the Western-style court process. Drawing on the experiences of Sierra Leone, Graybill (2017: 145) observes that the ‘*Fambul Tok*’ of Sierra Leone has had a far greater impact than the Sierra Leone TRC. The TRC alone, she argues, would appear to be too official and a lot of people in rural areas where most of the conflicts and fighting took place, would be unable to air their opinions. It was also viewed by rural villagers as a foreign institution; and because they did not operate at village level, the people did not benefit from the TRC and the Special Court and thus opted for village dialogue as a means of settling their conflicts.

The TRC’s emphasis on individual victims where only the victim is invited to testify without the entire family does not resonate with villagers (Graybill 2017: 149). This is because it contradicts the African philosophy of interconnectedness based on *ubuntu* where families are expected to participate. The hurt during the war was to the whole family and not only the directly affected individuals. This is another reason

²²⁷ Interview 27, with a South Sudanese intellectual: (7/3/2016)

²²⁸ Interview 18, with a member of an opposition political party: (11/3/2016)

why incorporating local truth-seeking strategies, such as oaths and rituals involving families and communities in South Sudan, would positively contribute to the process. Huyse and Salter (2008) observe that the reasons why African post-conflict countries may prefer the ritual reconciliation approach are because it is informal, ritualistic, and communal, as opposed to Western style, approach such as the TRC which are formal, rational and individualistic. Again, like the Hybrid Court, the TRC has a limited lifespan (Graybill 2017: 149). This is a challenge to reconciliation, which is a process for a country like South Sudan that has suffered a prolonged and devastating war. As reconciliation cannot be accomplished within one or two years, and most TRCs are expected to end their tasks; involving local mechanisms means that the process will continue even if the formal process has ended.

One of the participants remarked, “in a country like South Sudan in which the literacy rate is so low, ways of life differ enormously, so the best policy is to use the local culture to move the communities forward, otherwise we will end up with an alien concept that people cannot understand” (KI 25: 27/2/16).²²⁹ The question is how can this be nationalized as opposed to making it a communal issue? It must be broad-based. Another informant observed, “I think there are a few important matters that could be taken seriously, for example, there are different mechanisms in South Sudan but they all actually deal with the same restorative justice: mediation, compensation and reconciliation” (KI 30: 9/3/16).²³⁰ These three elements which are being applied in various degrees by different communities could be used nationwide. But this may involve the question of codifying the practice for uniformity, which again will deviate from the oral ways in which these mechanisms have been preserved and passed on from generation to generation.

²²⁹ Interview 25, with a peacebuilding practitioner: (27/2/2016)

²³⁰ Interview with a Human Rights Lawyer: (9/3/2016)

6.11.2 Hybrid Court for South Sudan (HCSS)

The HCSS is a tribunal that is to be established to bring cases against individuals responsible for international crimes committed since 15 December 2013. The justice and accountability component of the ARCSS is premised on some of the heinous and horrendous atrocities committed in South Sudan since 2005 but more especially between 2013 and 2015. It was hoped that the peace agreement of August 2015 would hold. But the war has continued after 2015; this means there will be a need to revise this provision and similar ones in the agreement documents to make them relevant and encompass all the human rights violations when the war ends.

The fight against impunity and efforts to hold to account those with the highest responsibility and to ensure non-repetition is the responsibility of criminal tribunals and the ICC (Novak 2015). This means trials of atrocity crimes: genocide, crimes against humanity and war crimes, are not within the remit and jurisdiction of customary justice systems. But customary courts could be endowed with the power to hear cases of international crimes in cases involving victims and perpetrators who come from the same community (UNDP 2016).

Traditional institutions provide important services that often resonate more with the South Sudanese conceptions of justice which are restorative, aimed at community harmony and peaceful coexistence rather than the statutory system. The involvement of customary institutions could also help to reduce the exorbitant costs associated with Western-styled justice, which relies heavily on expensive prosecutors and lawyers. The PPP, for example, could be cost-effective compared to the Hybrid court and the TRC. One respondent commented, “the Wunlit people-to-people process took about two weeks to resolve an atrocious conflict and reconcile communities, but it took the ICTR too long to deal with the genocide cases

in Rwanda and the ICC to handle the case of Charles Taylor in The Hague” (KI 23: 19/2/16).²³¹

But if a role is provided for customary institutions in the transitional justice process, a key procedural question concerns how to formulate such a role. The formalization of customary institutions and dispute resolution mechanisms such as the *Gacaca* after the 1994 genocide in Rwanda proved problematic because the process undermined the flexibility of the institutions and reduced principles that in practice had been negotiated on a case-by-case basis to specific rules (UNDP 2016: XV). Moreover, unlike the Rwanda case with only two major ethnic groups: the Tutsi and Hutu who share similar cultures, South Sudan has over 60 ethnicities. This means a huge difficulty of formalizing customary processes through legislation, given the diversity of customs. Another approach would be to allow customary and statutory processes to proceed in parallel without forcing the customary mechanisms into an artificial formalization process.

But there are many challenges to the application of local approaches in the three transitional justice institutions provided in the ARCSS. The major challenge is to try and accomplish this outside the Peace Agreement. One respondent argued, “if a role is to be provided for customary institutions in the judicial process, then we must negotiate it outside the Peace Agreement and this means we must change some sub-sections within the Agreement” (KI 30: 9/3/16).²³² The process of changing any term in the settlement applies to all the parties and stake-holders involved, and this is a very tedious business and a challenge because the process leading to this is exclusively political. The national constitution includes government acts that give power to traditional authorities and we also have the customary law that recognizes what these people do by way of custom. But the current accord states that when there is a conflict between the agreement and the constitution, the terms of the agreement take precedence over the latter and so ARCSS is much stronger than the

²³¹ Interview 23, with a member of parliament: (19/2/2016)

²³² Interview 30, with a Human Rights Lawyer: (9/3/2016)

constitution (ARCSS 2015). These are some of the practical challenges that make the application of the local approaches to ARCSS problematic.

Another difficulty associated with the application of customary justice methods is that there are sometimes cultural barriers that impede on individual's speaking out for his/her rights because they feel stigmatized. For example, both women and men who have suffered sexual abuse face the problem of cultural obstacles which need to be overcome if local mechanisms are to be applied alongside the HCSS. But do all South Sudanese prefer local procedures over prosecutions? The evidence is mixed. A majority believe that perpetrators should be prosecuted, but an equal number also support the use of local solutions. For those who prefer these mechanisms, healing and the restoration of relationships rather than the imposing of punishment are the primary goals. One respondent observed, "South Sudanese have their own way of addressing justice and it does not involve sending them to prison" (KI 25: 27/2/16)²³³. Similar comments have been made by a small number of participants.

Based on my observation during field work and informal conversations with a few individuals, however, I have learned there is a lot of bitterness among members of different ethnic communities; so, in a country like that where the conflict has assumed an ethnic dimension, it becomes difficult to go after individuals through trials, because that sort of action ends up polarizing the community and what the accused has to say is that this is the work of the other group, which is sufficient to estrange people. On a similar note, one respondent asserted, "I think we should stop this whole idea of moving the whole thing towards a punitive form of justice because this will end up polarizing the people further, and probably we might witness a fresh round of violence, as we can already see from the way that the agreement is being

²³³ Interview 25: with a peacebuilding practitioner (27/2/2016)

implemented that there is no compliance on either side because each feels they might get convicted” (KI 30: 9/2/16)²³⁴.

Referring to similar post-conflict contexts, another individual pointed to the Mozambique strategy because its dynamics resemble that of South Sudan. The Mozambicans made a political decision to move forward and forgive, so the issue of prosecutions ended and that seems to have worked to an extent, there is still sporadic violence in the country. The South Africa TRC provides another relevant example, because they stopped short of prosecutions, except for those denied amnesty. The perpetrators could come out openly and confess what they did in exchange for amnesty. In South Sudan, despite the three proposed transitional justice institutions, there is no incentive for people, who otherwise have committed atrocity crimes, to come forward, testify and apologize for what they did. But one participant did not consider South Africa a relevant case, as he explained, “in South Africa many are still sad because of a lack of justice and they feel upset to see the perpetrators walking free and even being rewarded for what they did” (KI 41: 17/11/16).²³⁵ The failure to see justice done, according to this view, could even encourage the victims become perpetrators themselves. For example, there is the case of a police officer who was denied amnesty and wanted to solicit forgiveness from the family of his victim to obtain absolution but was hit and injured by the son of his victim (DVD-IJR).²³⁶

Not all the participants interviewed in this study were in favour of local reconciliation and/or TRC. There were voices supporting retributive justice. “For us to break this kind of impunity we must know all the people who committed that offence if they are still alive. They must face justice so that people will say, ‘yes, let us now reconcile’

²³⁴ Interview 30, with a Human Rights Lawyer: (9/3/2016)

²³⁵ Interview 41, with a transitional justice practitioner: (17/11/2016)

²³⁶ A DVD on Truth, Justice and Memory: A 12 -episode course on the TRC produced by the Institute for Transitional Justice and Reconciliation (IJR), Cape Town-South Africa.

because the law has taken its course” (KI 3: 27/2/16).²³⁷ In his view, we cannot talk about reconciliation, and people will not re-establish friendly relations if they see the culprits and their abusers not just moving about freely but also still enjoying the positions of power granted to them as rewards by the state and who could kill more people if they are not stopped through punitive action. The general arguments of supporters of retributive justice, that there is no peace and no reconciliation without punitive justice, seem to be problematic in some political contexts where choices must be carefully made and peace and justice paths need to be sensitively charted without overlooking either alternative.

For some, retributive justice is the obvious instrument to realize both these conditions. A list of its possible benefits, have been identified by adherents which may help policymakers in assessing its potential contribution to reconciliation (Freeman and Hayner 2003: 97). The first is avoiding unbridled private revenge: If there is no criminal prosecution at all, victims may be tempted to take justice into their own hands: this poses the risk of turning into vigilante justice with summary executions, a spiral of revenge and so on. Such “self-help justice” can trigger social and political disturbances. On the other hand, refraining from prosecution may encourage conspiracy theories according to which the leaders of the new regime are suspected of collusion with the former regime (Freeman and Hayner 2003: 97). This is where it is important to devise a context-specific complementary approach to transitional justice where all the available mechanisms, including local justice, should be evaluated and their contributions validated and implemented, if found relevant. This may provide a solution to the overemphasis on the dominant international measures which have been applied as a universal template but have often been met with failure.

Whatever form justice takes however, in the views of some informants, the guilty party needs to account for the harm done. In the case of South Sudan, the government needs to accept liability for the problems the country has experienced

²³⁷ Interview 3, with a Nuer youth: (27/2/2016)

since December 2013 because, as discussed in Chapter Three, the civil war started as a political power struggle within the ruling party. One respondent declared, “our leaders need to apologize and take responsibility for the harm they have caused to the people of South Sudan, especially to those communities who bore the brunt of gross human rights violations and atrocities committed against them which include: killings, torture, rapes, destruction of property, and forced mass displacement” (KI 27: 7/3/16).²³⁸ In his view, it was clear that such public as well as specific apologies by the leadership would open a path for reconciliation as both victims and survivors would think the horrors they had experienced had been acknowledged, so they had no need to remain stuck in the past. This suggests that accountability is not all about retributive justice but can take different non-judicial forms such as apologies.

6.11.3 Reparations and Compensation Authority (RCA)

The RCA is a body that is to be established to provide compensation and reparations to people who lost property or were victims of abuses because of the fighting. As intermediaries between communities and the government, traditional authorities have a wealth of information about the circumstances of people in their communities, which could be used to supplement information compiled about the victim population through truth-seeking efforts and criminal investigations (UNDP 2016). The reparations programme should also coordinate its activities with traditional forms of compensation, such as: the customary practice of paying ‘blood wealth’ in the form of cattle from the culprit to the family of the deceased in cases of homicide.

Other possible areas of coordination include the determination of punishments and remedies. For example, statutory courts or HCSS could refer disputes about reparations or compensation to the relevant customary law courts, or ask traditional authorities to oversee the ceremonies of post-trial reconciliation of the parties.

²³⁸ Interview 27, with a South Sudanese intellectual: (7/3/2016)

As discussed in the previous sections, this is not without problems if the traditional compensation mechanism is to be applied, consideration must be given to the magnitude of atrocity crimes committed during the conflict where it is virtually impossible to ascertain the number of lives lost, who has killed, and the destruction of property that always results from modern warfare. However, traditional authorities could play a vital role in a reparation programme because there may be cases that are straightforward and where compensation for murder could be determined. Since they are well acquainted with their communities, traditional authorities would be well placed to assess reparation claims and manage disputes or misunderstandings that result from the process (UNDP 2016: 12).

6.12. Findings

From the discussions and analysis in this chapter, it seems the limitations of local approaches regarding possible application to modern conflict and transitional justice in South Sudan out-weigh the strengths attributed to the mechanisms and resources. For example, traditional authorities have already suffered political manipulation and a loss of respect by an armed youth and a militarized society, as well as interference from statutory lawyers, and a loss of values from which they draw their authority because of war and external social influences. The nature of local antagonisms and warfare has changed and has contributed to the erosion of the old mechanisms, increasing the loss of oral history because they are not coded; the politicization of ethnicities and communities, the manipulation of chiefs by the government.

There is also competition over constituencies and legitimacy between representative legislators and traditional authorities. The influence of modern monotheistic religions (Christianity and Islam) continues to erode the traditional, ritualistic and spiritual role of local beliefs as some of their new converts look on their ceremonies as devil worship. Added to this, there is an absence of appreciation for the local by young people. All these difficulties have weakened the capacity of the native mechanisms to attend to the issues they were designed to address, and has revealed their lack of relevance and potential in relation to modern war situations and how to deal with their aftermath. Conversely, the claim that traditional strategies have a certain

relevance and potential has been validated, because the claim is about the failure of the international liberal institutions and actors to recognize, utilize and incorporate local initiatives and resources for the management of modern conflicts. Useful and potentially compatible local processes include peacebuilding and post-war reconstruction.

South Sudan is a recipient of the dominant liberal peacebuilding methods. As a researcher, I sought to find out what the international peacemakers have been doing in South Sudan. I have interviewed the agents of the liberal peace intervention systems, such as the UN, Troika member countries, international civil society groups and the IGAD mediation team, who acknowledged the relevance of local mechanisms and resources that could be applied alongside other interventions for the resolution of modern conflicts. For example, one of the international informants admitted, “South Sudan has these mechanisms which are important and they are being used for peacebuilding efforts at local level” (KI 38: 16/3/16).²³⁹ If they are important and relevant, the question is what have they done? To what extent have they been adopted, if at all? Why is it the case that they have not actually integrated them into the current peacebuilding strategies?

I have found no evidence to support their claim, at least during the time of the study, about their practical intervention through the incorporating and utilizing of local resources. Neither did they demonstrate that they were making a difference by producing complementarity of hybrid peacebuilding. For example, in the 2015 ARCSS, they made no use of the TRC system which is based wholly or, at the very least, on local procedures, rather they used the usual dominant TRC approach. They have not moved in the direction of restorative justice to address the issue of how we can reconcile bitterly divided communities. Instead, they have used the Hybrid Court, thus mainly focusing on the retributive justice dimension, to address the issue of

²³⁹ Interview 38, with a European Diplomat: (16/3/2016)

impunity. It is one thing to recognize the relevance of these mechanisms and another to apply them. Is the question rhetorical?

Based on my observation during field work, it is not only rhetorical at all that they realized the possible relevance of local methods for post-conflict justice and reconciliation. There are processes that they are doing to support, compliment and validate their position. As an example, since signing the ARCSS in August 2015, the UNDP, through the South Sudan Law Society (SSLS,) has been providing training in transitional justice for the traditional authorities. Other efforts include a three-phase research known as South Sudan Customary Authorities Project (SSCA) commissioned by the Swiss government and managed by the Rift Valley Institute (RVI). But this does not translate into any effort to incorporate local approaches into transitional justice.

The dominant liberal peace procedure continues to be used even if it does not agree with the African world view, such as *ubuntu*, which promotes restorative justice over retributive justice. It most likely means that having made their usual interventions in the post-conflict situations and initiated various activities based on a short-term quick fix-and-exit strategy, they realized, at the implementation phase, that these activities did not translate into peacebuilding, because there was a disjuncture between the citizens' aspirations for restorative justice and the problem of reconciling bitterly divided communities, an issue which programmed activities could not address. They then became aware of the use and relevance of local initiatives, an idea they had not previously considered. In this way, validating the utility of the actual intervention may be considered as an afterthought, not an idea which they had from the outset.

6.13 Conclusion

This chapter has analysed in detail the local and international justice systems and practices from the viewpoint of post-conflict justice and reconciliation in South Sudan. It has assessed the potential roles and limits of these institutions and strategies and the extent to which the Dinka and the Nuer justice and reconciliation mechanisms have a potential for application to transitional justice. There are

possibilities for fusion and complementarity of interventions in dealing with past human rights violation and efforts to bring about reconciliation. However, based on the participants' comments, it seems that the debate and the claims made about the efficacy of traditional approaches and societal resources, as well as local institutions that are to be used for the resolution of conflict or peacebuilding, are overstated. Conversely, the international approaches to address post-conflict situations in Africa have always failed to address the context-specific justice and reconciliation needs of the local people. This is due to failure to recognize and incorporate local practices in their intervention strategies; something that needs to be addressed if complementarity is to be realized. The following Chapter will make a summary of the findings, core arguments, implications of the study and general conclusion.

Chapter Seven

General Conclusion

7.0 Introduction:

What is the potential usefulness of local South Sudanese approaches to the resolution of current-day conflicts in the country? In recent years, there have been many assumptions around the answer to this question: from pinning all hopes for conflict resolution on 'customary' mechanisms, to discussions of 'hybrid' solutions, or expressions of the futility or ineffectiveness of older local justice in the face of modern technological warfare and the form and scales of political conflict. This thesis has sought to better understand the relevance, potential and role local approaches can play in resolving modern conflicts in South Sudan. It focused on post-conflict justice and reconciliation as practiced by Dinka and Nuer ethnic communities. The study aimed not to solve South Sudanese problem but to provide an understanding of issues surrounding conflict resolution in the country by exploring the possible role local peacebuilding procedures could or could not play in global peace efforts and in current and future attempts to deal with the legacy of human rights abuses and to reconcile divided communities in the aftermath of South Sudan's long civil wars.

7.1 The core arguments of the study

This thesis is based on comparative analysis of historical and anthropological secondary data; contemporary research on South Sudan's conflicts; contemporary literature and theory on justice and peacebuilding; and primary research in South Sudan via a series of in-depth open interviews. As well as interviewing traditional authorities, I explored the opinions of other stakeholders, both local and international, including the UN and other international and regional partners, about the relevance of applying local methods to the current conflict in South Sudan.

I employed social constructionist and interpretivist procedures and relied on a thematic analysis. From the interpretivist perspective, local approaches are social constructions that are lived by the people who have experienced local conflict

dynamics and so the meaning that is interpreted as knowledge resides with the people's opinions, perceptions and experiences. In this analytical process, research participants' comments both confirmed and contradicted some of the claims of the liberal peace critics.

This thesis has set out several key arguments. Firstly, it critiques the dominant liberal peace approach to post-conflict peacebuilding, acknowledging its strengths and exposed its limitations by examining two peace agreements that followed its model: the 2005 Sudan CPA and the 2015 ARCSS. I analysed the transitional justice policies provided in the agreements and their efficacy to deal with or fail to deal with the legacy of the wars. I examined the claim of the liberal peace critics that the local mechanisms and justice systems, as opposed to international legal institutions such as the ICC and *ad hoc* tribunals such as the ICTY and ICTR, were relevant to societies that rely on other philosophies and world views such as the African *Ubuntu* principle based on communitarian rather than individual logic. The focus of *Ubuntu* is on the rebuilding of the broken relationships of peaceful coexistence based on restorative justice, instead of punitive measures informed by retributive justice which often polarizes communities instead of reconciling them in the aftermath of violent conflict.

The thesis then turned to a critique of the African ideology of peace represented by the *Ubuntu* principle. This was necessary to arrive at a reasoned and balanced approach that would capture the benefits of both beliefs by analysing their weaknesses and strengths for possible complementarity and hybridity in peacebuilding. It was also important because initially, and before going to the field, I concurred with most critiques of liberal peace theory. But the thesis' overall finding contradicted my initial understanding that local approaches are an antidote or alternative to liberal peacebuilding techniques, mainly employed by the UN and international agencies. My field research experience and analysis of the participants' comments revealed different views regarding the role of local institutions and mechanisms in South Sudan in civil war situations. Lack of appreciation of these views, I felt, would be a major drawback to any understanding and analysis of the

role these mechanisms could or could not play in resolving modern conflicts and in dealing with post-conflict justice and reconciliation. Thus, on this basis it is vital to any discussions on methods of peacebuilding and reconciliation in South Sudan and elsewhere to be built not on stark theoretical view but on the more complex analysis of the complementarity and interconnectivity of concepts and practices.

Thus, the central finding of this study is that claims made about the efficacy of local strategies and societal resources (not to mention the local institutions that are to be used for the resolution of conflict or peacebuilding) are overstated. The limitations out-weigh the so-called strengths attributed to the mechanisms and resources. As discussed in Chapters Four, Five and Six, the power of these mechanisms has been weakened by several factors both external and internal. These current weaknesses seem to pose numerous challenges in applying these 'customary' mechanisms to contemporary conflicts and transitional justice in post-war societies. Nevertheless, the evidence shows that local institutions for peacemaking and justice mechanisms are still widely used in South Sudan. Opportunities still exist at both the theoretical and practical levels: culture being non-static and a social construction means that the procedures can be reformed by adopting new and progressive values from other practices.

Conversely, the international approaches to address post-conflict situations in Africa, such as the ICC and the international tribunals, have systematically failed to address the context-specific justice and reconciliation needs of the local people. However, there are possibilities for the fusion and complementarity of interventions in dealing with past human rights violations and efforts to bring about reconciliation. The efficacy of both approaches in dealing with modern conflicts seems to reside in complementarity. This means a one-size-fits-all programme, whether this is prescribed by the liberal or the local approach, is inappropriate to internal wars. The evidence for this is to be found in Dinka and Nuer experience in the 1990s during the South Sudan liberation war, as exemplified by the 1999 Wunlit peace and reconciliation conference. The convergence of traditional strategies, the gospel values and the modern peacebuilding techniques (discussed in chapters four and

five and employed in Wunlit) showed hybridity as well as pragmatic complementarity in action. The extent to which such a procedure can be used to address the issue of post-war peacebuilding in South Sudan should be determined by the context rather than by the imposition of a universal template.

Based on the conflict analysis, peace agreements and international efforts at peacebuilding in South Sudan, it seems that the role of grassroots strategies is crucial if the fundamental causes of internal conflicts and the building of sustainable peace are to be successfully addressed. The study established that traditional mechanisms were not incorporated and applied in the two peace processes and final agreements that settled the 1983-2005 war and the ongoing post-independence conflicts. Nonetheless, it uncovered the role and contributions of local mechanisms before and during the years of war. The survey has also shown how the failure to employ local strategies to address community grievances and to deal with past human rights abuses, in favour of the dominant liberal peacebuilding model, is significantly responsible for the persistence of hostilities in South Sudan. In many respects, this model may be fit for purpose, but it seems that on its own, it is unequal to the task of building sustainable peace in South Sudan.

The conflict in South Sudan is so complex that it has attracted various actors with different interests; where local conflicts, grievances, cattle-raiding economies and loss of livelihoods (through war or climate change) all feed into a hybrid conflict situation, and wider societal crises that must be resolved, not just the immediate political power sharing and temporary political reconciliation between elites. The practical implication of this study shows that, for the liberal peacebuilding model to address the root causes of internal conflicts and build sustainable peace, local strategies could provide a significant complementary contribution, since justice, as discussed in Chapter Five, entails more than simple retribution.

7.2 Wider Implications

This study has important implications for South Sudan in a practical sense and in terms of outside interventions; but this is not just about South Sudan. There are also wider implications in practice, theoretical considerations, and ongoing armed encounters in Africa and other parts of the world. For example, there is certainly a resemblance to ongoing hostilities in the Congo which are preoccupying the ICC. The DRC has been involved in multiple civil wars since its independence in 1960. Over the years and at different moments under different leaders, these confrontations, which have been characterized by gross human rights violations, have assumed a regional dimension with the involvement of such countries as Rwanda, Burundi, Uganda, Tanzania, Sudan and Eritrea. These foreign actors sometimes fought alongside local people. But some of the disputes are themselves local, involving local ethnic groups and tribes. This has made the conflict hybrid in nature as the actors pursue different goals and interests within the same territory and conflict.

For many years, efforts to resolve the conflict and build sustainable peace have not so far worked. Equally, transitional justice mechanisms both judicial and non-judicial provided in the different peace agreements that attempted to resolve the conflicts have faced serious challenges. Like the Hybrid Court provided in the recent South Sudan peace agreement, the current mechanism in the DRC is the Specialized Mixed Chambers which involves international and national magistrates to deal with crimes committed since 2003. Operating in tandem with this mechanism is an effort to reinforce the national judicial system, mainly to deal with crimes committed after 2003. The ICC's role in this mix is to prosecute those with high responsibility, while other national and foreign groups who committed atrocity crimes during the civil war are handled by the national system supported by the UN through a group of magistrates based in the United Nations Organization Stabilization Mission in the

Democratic Republic of the Congo (MONUSCO)²⁴⁰ known as the 'Prosecution Support Cell', the main UN project in the DRC.

At the local level, there is a joint effort by traditional and religious leaders. This is the main framework for reconciliation in the DRC but lacks adequate support from both the government and the international organizations; so, its exertions and results have not been impressive. The lack of support for local action may be because the ICC, for example, has taken centre stage in dealing with the past human rights violations in the DRC. Preoccupation with the ICC may have overshadowed other efforts such as those championed by the church and the local institutions. A hybrid model might be better because, as I discussed in Chapter Two, modern African conflicts are civil wars which attract and involve different actors from different societal levels and sometimes neighbouring countries with different interests such as that in the DRC. This means that addressing such conflicts requires not only the cooperation of these actors but also the application of the relevant mechanisms that address the feelings of these groups and appeal to their holistic needs: political, economic, spiritual and psycho-social among others. The reconciling of victims and perpetrators and their communities and the ritual reintegration of offenders into society for the purposes of peaceful coexistence is at the heart of the *ubuntu* principle, which the ICC does not provide.

This study highlights the importance of local specificity and context in any analysis, rendering wide comparisons somewhat redundant beyond a broad lens. This is a draw back in determining implications in other places. However, as I mentioned in Chapter Four, conflict resolution and reconciliation in South Sudan and throughout Africa revolves around mediation, arbitration, compensation and reconciliation rituals. And as underpinned by the African philosophy of common humanity

²⁴⁰ An acronym based on its French name: Mission de l' Organisation des Nations unies pour les stabilisation en Republique democratique du Congo, a United Nations peacekeeping force in the DRC.

exemplified by the *ubuntu* vision, they only vary in application. Moreover, lessons can be learned from the experiences of other communities.

This thesis evidences, and emphasizes, the importance of creating hybridized and historically-contextualized intervention policies, involving traditional strategies. This issue of combining local and international processes involves points of serious disagreement. I have discussed these contentions in Chapter Six: they include tensions between local practices and international human rights and humanitarian law; retributive versus restorative justice systems, for example, the granting of amnesty for atrocity crimes that goes contrary to universalist norms. The question is: are Nuer and Dinka transitional justice systems effective, and/or can they be incorporated into international initiatives? In Chapter Five I discussed the norms that are associated with identity, justice, compensation and reparations; and the ideas of Nuer and Dinka restorative justice, their convergences and divergences and how both differ and converge with those of the international community.

The key proposals which come from liberal international thinking, as discussed in Chapter Six, are that certain crimes such as genocide, war crimes and crimes against humanity require punitive action for deterrence and as a guarantee of non-repetition; and that trials are also important to ensure citizens' trust in the judicial system. The long-term benefit of these standards is that they engender respect for the rule of law and human rights, including through state institutional reforms necessary in periods of transition from civil war to democracy. But serious tensions exist between these global liberal norms and customary standards, with little room for manoeuvre. So far there is an impasse whereby the liberal international legal framework controls the agenda and dominates the discourse. No matter how much scholars and practitioners insist that we need to address ourselves to the local, this has not really happened at policy level, which suggests a poor environment for complementarity. As discussed in Chapter Six regarding the roles of the Truth Commissions, Hybrid Courts and Reparations and Compensations, possibilities for overlap do exist. But the more important question is: are these people speaking the

same language? It is likely that further work and research is needed to determine how far, and how, these entities can converge.

The underlying political and economic philosophy underpinning the liberal approach to the post-conflict environment is the assumption and discourse about entering the post-conflict situation to democratize it, implement a rule-of-law revision or constitutional reform, promote respect for human rights, and attend to some aspects of state building, rebuilding and reforming the police, civil society and state-society relations. While these are the post-war peacebuilding intervention activities for the reformists, they do not translate into peacebuilding and the reconciling of the bitterly divided communities, as the process lacks consultation and an engagement with the local representatives before intervention. This means that one of the elements of being successful in peacebuilding is that of working with and through the local culture and society which serve as an example of complementarity in peacebuilding. The critique of liberal peace concerns the reforming of the intervention practices in order to recognize, incorporate and take on board local relevance prior to intervening. The argument goes that before entering the post-conflict zone the actors should consult with the conflict-affected communities and get their views as to how the issues should be addressed. The failure of liberal peacebuilding to recognize local resources and mechanisms has implications for practical participation when war ends. Sticking to the dominant discourse and meta-narrative and ticking boxes about what to do in a post-war situation without involving local resources tends to block constructive engagement with the local agencies for possible complementarity.

But not all liberal peacebuilding activities in post-conflict situations are problematic and irrelevant to local contexts. There are values promoted by the liberal peacemakers that are good such as advocacy for the protection of human rights though that depends on definition of human rights; political participation at various levels of society to ensure that separate groups feel represented as part and parcel of the larger society; security and the rule of law as a means of establishing order and protecting the most vulnerable in the society by ending impunity from punishment. This means that the liberal peace agenda, when undertaken in a

complimentary way, could lead to positive results. Human rights advocacy, for example, which is generally associated with liberal peace agenda, and promoted by liberal peace agents, when implemented through existing local structures could change societal perceptions and empower vulnerable members of the community. This could play a key role in emancipating certain groups from cultural forms of injustice. As discussed in chapter five, some women participants commented on the unequal treatment of women and girls in Dinka society especially regarding, for example, unequal opportunities in education and ownership of property such as land and livestock. This suggests that there are situations where liberal values such as human rights, are consistent with the needs of the community in terms of equality of treatment, political participation, socio-economic rights and freedom from institutionalized exclusion by chiefs and councils of elders.

There are some key points of convergence highlighted by this thesis. There is evidence of cooperation between local and international peacebuilding agencies (for example, as discussed in Chapter Six), and support to chiefs' meetings and reconciliation events by international bodies such as the UNDP and UNMISS. Findings on complementarity such as these are significant because they contradict the liberal peace critiques and assertions on the failure of liberal peacebuilding to recognize local mechanisms. But this cooperation and support does not amount to incorporating these local procedures in their programming and intervention policy. Moreover, the international bodies, as agents of the liberal peace agenda, cannot promote culturally-based justice mechanisms which, according to the universalist view, tend to be non-progressive and sometimes contradict human rights principles. Although some participants from the international community whom I interviewed recognized the relevance and potential utility of traditional procedures, I found no evidence to support their claim in terms of practical intervention by incorporating and utilizing local resources.

I examined whether it was purely rhetorical that they realized the possible relevance of indigenous methods for post-conflict justice and reconciliation. I established such was not the case, there are some efforts and engagements with local authorities.

But these efforts may not translate into any attempt to incorporate local approaches to transitional justice, as the dominant liberal peace procedure continues to be used even if it does not agree with the African world view, such as *Ubuntu*. But it demonstrates something positive which confirms and reinforces the upsurge of interest in local turn in the fields of development and peacebuilding. Important to note is that local approaches and liberal peace elements, such as the international human rights and humanitarian laws, are socially constructed. This means it is possible to construct and reconstruct them for complementarity, drawing on both philosophies when dealing with the legacies of civil wars.

7.3 Further research

This thesis has highlighted many areas of further research within the core issues and findings of this study. Firstly, one of the main contributions of this study to peacebuilding literature is the discourse on the spiritual dimension of conflict, peace and reconciliation with the spirits of the dead, which remains an under-researched area. The spiritual realm of peace and conflict has not been adequately explored by Peace Studies. The general trend in Peace Studies is to analyse cause and effect based on the material world. However, in some cultural contexts, such as those of Dinka and Nuer communities, cause and effect goes beyond the material world into the realm of the spirits. Thus, the analysis of cultural practices such as witchcraft, cursing, oath-swearing and violations as offences that not only harm the living but also offend the living-dead (ancestors) are an important aspect of the spiritual dimension of local procedures. This is very important in understanding the practice of reconciliation with the dead.

Second, another area of future research would be to further study, analyse, document and compile all the local peace agreements within the context of civil war in South Sudan, and the local peacebuilding mechanisms employed, especially those that were conducted since 1991. There have been several local reconciliation initiatives in South Sudan such as the Akobo and the Wunlit peace conferences. Documenting and analysing these strategies would provide a greater understanding of the potential and the limits of local approaches to modern conflicts.

Thirdly is the area of gender and local peacebuilding, especially the gendered approach to conflict resolution and reconciliation. Without the civic engagement and political participation of both men and women, it would be difficult for peacebuilding to address historical, systemic and structural factors of women's exclusion and gender inequalities, including agency and rights. The main trend in Peace Studies has been to analyse gender in terms of role and activities, but a gender-oriented approach to local theories of peacebuilding and transitional justice would inform theory and enrich literature.

Fourthly, this study acknowledged the limitations of native techniques because of internal and external influences and, based on my discussion in Chapter Six, local strategies deserve further attention as a complimentary method to achieving justice and positive peace. These approaches could benefit from more empirical research and theoretical considerations for a better understanding of their potential and possible application to modern conflicts. The interplay between politics, history and anthropology provides possible routes for investigation.

Appendices

Appendix 1: Participant Information Sheet

You are being invited to take part in a study. This sheet provides some information to help you to decide whether you wish to take part in this research. Your participation is strictly voluntary, and won't receive any financial benefit in return. Furthermore, no potential harm or risk is anticipated. Before you decide if you wish to take part, it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully and ask if there is anything that is not clear or if you would like more information.

Thank you for reading this.

Who will conduct the research?

Martin Ochaya Lino Agwella, PhD student University of Bradford, UK

Title of the Research

Localizing Peacebuilding in South Sudan? A case of transitional justice and reconciliation

What is the purpose of the research?

In this study, I am interested in and will explore the potential utility of local peacemaking approaches to contemporary armed conflicts; and to determine the extent to which the justice and reconciliation mechanisms used by the Dinka and the Nuer in South Sudan can be applied to the conflicts in South Sudan to build sustainable peace.

Who can take part?

Traditional Authorities (Elders & chiefs), government staff, UN staff, IGAD Mediators, civil society groups (Professionals, experts, Peacebuilding practitioners, Faith based, Development corporation partners), women & youth.

Why have I been chosen?

I chose you to participate in this study because you are a chief/an elder/ a professional/an expert/a civil society actor/ peacebuilding practitioner/UN staff/IGAD Mediator/ of your position and role in the government.

What will the study involve?

If you decide to take part in this study, I will ask you to answer some questions. The discussions will take about 45 minutes to one hour at the longest. There are also questions on your age, sex and level of education, because these factors can influence social behaviour and attitudes.

What will happen to the data collected?

All the information you give me will be confidential and used only for this study. It will be securely stored in my University of Bradford drive and only destroyed after completion of the study, guided by the data protection policy of the University.

How is confidentiality maintained?

The information given will not be made available to anyone not directly involved with the study. This is to protect the privacy of participants. However, names of the participants will/can be written on the study materials, that is including the interview guides. The interview guides will be kept by the researcher and nobody else will be allowed access to them. Anonymity may also be offered on request.

Ethics approval has been granted by the Chair of Humanities, Social and Health Sciences Research Ethics Panel at the University of Bradford on 18th December 2015.

What will happen if I don't want to take part or if I change my decision?

You are free to decide to take part. If you decide to take part, you will be asked to sign a consent form. If you decide to take part you are still free to withdraw at any time without giving a reason and without detriment to yourself.

Will the outcomes of the research be published?

The outcome of the research will be submitted to the University of Bradford for academic purpose and award of a Doctoral degree.

Contact for further information

Dr. David Harris

Email: d.harris7@bradford.ac.uk

Appendix 2: Consent form

Research Title:

Localising Peacebuilding in South Sudan? A Case of Transitional Justice and Reconciliation

Aim of the Research:

To explore the potential utility of local approaches to the resolution of contemporary armed conflicts; and to determine the extent to which the justice and reconciliation mechanisms used by the Dinka and the Nuer in South Sudan can be applied to the conflicts in South Sudan to build sustainable peace.

Ethics approval has been granted by the Chair of Humanities, Social and Health Sciences Research Ethics Panel at the University of Bradford on 18th December 2015.

Consent:

I have read and understood the attached information sheet giving details of the research project. I have had the opportunity to ask the researcher questions that I had about the project and my involvement in it and understand my role in the project.

My decision to consent is entirely voluntary and I understand that I am free to withdraw at any time without giving a reason. I understand that data gathered in this project will be for research purposes and I understand that my name will not be used in the report, and that every effort will be made to protect my confidentiality. I agree to take part in the study.

Participant's name.....Date.....Signature.....

Researcher's.....Date..... Signature.....

Appendix 3: Data collection Instruments

Interview Guide

Section One:

Part One: Concept & Practice of Justice and Reconciliation in Dinka/Nuer community

a) Concept and aims of Justice

1. When we talk about justice in Dinka/Nuer language, what do we mean?
2. What was the main aim of indigenous justice?
3. How many types of justice are there in Dinka/Nuer culture?
4. Who were the most important people to administer justice?
5. What did they do?
6. What happened afterwards (colonial period; 1956-1982; 1983-2015)
7. How did Dinka/Nuer call indigenous justice process?

a) Customary Law

8. What were the sources of customary law?
9. Who were the law makers?
10. How important was human life in Dinka/Nuer culture?
11. How did indigenous justice work in tragic cases where many people have suffered violent deaths?
12. What happened afterwards (colonial period; 1956-1982; 1983-2015)

b) The legacy of impunity

13. Were there occasions where offenders sometimes went unpunished?
14. In situations where offenders went unpunished how did people react?
15. What happened afterwards (colonial period; 1956-1982; 1983-2015)
16. What do you think should be done to address situations where people commit crimes and go unpunished?

c) Justice Mechanisms used by the Dinka/Nuer

17. How did the local justice and accountability work in cases of violent conflicts where many people have suffered deaths?
18. What are examples of justice that have been implemented at different points in the past (colonial period to 1956; post interdependence 1956-1982 and 1983-2015)?
19. What were the outcomes of the implemented programmes?
20. Are there records of major practices that you can show?
21. What political environments existed at each point of the history, which supported or not the implementation of those programmes?
22. What has been happening in recent years 2005-2015 in terms of transitional justice and reconciliation?
23. What effects did colonialism have on local justice system?
24. What changes have the process of interactions with the outside world have on indigenous justice system?
25. What do you think about Dinka/Nuer local justice and reconciliation practices being used in the context of war?
26. Are there variations in practice of justice and reconciliation among the different Dinka/Nuer clans/regions?
27. What commonalities can we draw between the Dinka/Nuer local justice and reconciliation practices?

d) Actors: Chiefs and their roles

28. What were the main requirements for becoming a chief?
29. What did chiefs do?
30. Have there been changes in the roles of chiefs over the years?
31. How can chiefs help in the resolution of modern conflicts in South Sudan?

e) Concept and aims of reconciliation

32. When we talk about reconciliation in Dinka/Nuer what do we mean?
33. What was the main aim of reconciliation?
34. How did reconciliation work?
35. Are there any differences in the way reconciliation currently works?

36. How did Dinka/Nuer call local reconciliation process?
37. What were the local rituals of reconciliation in cases of violent conflict where many people have suffered deaths/
38. What are examples of reconciliation that have been implemented at different timeframe in the past (colonial period to 1956; post interdependence 1956-1982 and 1983-2005)?
39. What were the outcomes of the implemented programmes?
40. What political environments existed at each point of the history, which supported or not the implementation of those programmes?
41. Was there any local reconciliation ritual used in cases of war related rape?
42. Do you think similar rituals can be applied in civil war situations?
43. What has been happening in recent years 2005-2015 in terms of reconciliation?

f) Actors: Elders & their roles

44. Who were the most important people to manage reconciliation?
45. Were elders important for the peacemaking process?
46. What did elders do in local reconciliation?
47. What were the requirements for becoming an elder?
48. How can elders help to reconcile people in civil war situations?

Part Two: Gender and local mechanisms of Justice and Reconciliation

1. What was the role of women in local justice and reconciliation?
2. Were there female chiefs?
3. Were women members of the council of elders?
4. What role do women play today?

Part Three: Potential and limitations of local approaches

Strengths

1. What do you think are the strengths of local approaches?
2. What types of conflict are settled by local mechanisms

3. Do you think local processes capable of dealing with large-scale atrocities where many people have suffered violent deaths?
4. What capabilities and comparative advantages relative to other methods do you think local approaches have for more effective peacebuilding in civil war situations?
5. What do you think about the Dinka/Nuer local justice and reconciliation practices being used in the context of the modern war in South Sudan?
6. What other local practices which are/might be used for war offences?

Weaknesses

7. What are the weaknesses of local approaches?
8. What do you think can be done to mitigate the weaknesses to raise the scale of the mechanisms to be applied to modern conflicts?
9. How was the Dinka/Nuer society organized prior to colonialization?
10. What effects did colonialism have on the local mechanisms of justice and reconciliation?
11. Do you think the rise of religious (Christian & Muslim) institutions and practices have undermined Dinka/Nuer local institutions and practices?
12. What challenges do you foresee arising from implementing these practices today?
13. Do you think contacts with other cultures have had influence on and caused some changes in local peacemaking institutions and approaches?
14. How can local approaches be adapted to suit contemporary environments and conflicts?

Section Two

Part Four: Causes and impacts of armed conflicts in South Sudan

1. There have been increased inter-communal conflicts in South Sudan before and after its independence; what do you think are the causes?

2. South Sudan got its independence in 2011; why do you think the country relapsed into violent conflict just two years after its independence?
3. The conflict which erupted in 2013 equally targeted civilians, particularly vulnerable groups (women, children, the sick and elderly) why do you think that happened?
4. What do you think can be done to reconcile the communities?

Part Five: Human rights violations & transitional justice policies in South Sudan

1. What do you say about the respect of human rights' principles in South Sudan?
2. What is the role of South Sudan human rights commission?
3. What is your opinion about the performance of the commission regarding defence and promotion of human rights?
4. Do you think violators of human rights sometimes go unpunished?
5. What transitional justice policies could be adopted in the case of South Sudan conflict?
6. The Compromise Peace Agreement for the resolution of the conflict in South Sudan provides for a hybrid court, what do you think about that?
7. South Sudan is a diverse society with diverse traditions of justice. Which local justice mechanisms are intended to be applied alongside formal justice system in the hybrid court?
8. What lessons do you think South Sudan can borrow from other African countries in terms of local peacemaking in post-conflict situations?
9. In Rwanda where there was a mix of justice processes (international, national and local), it was reported that the relationship was characterized by suspicion, friction and sometimes incompetence rather than by productive cooperation. How do you think the case of South Sudan will be different?
10. What kinds of institutional reforms do you think South Sudan needs (governance, economic, legal and security) sectors?

Part Six: Peacebuilding in South Sudan

a) Role of Government

1. Can you tell me about some of your peacebuilding projects?
2. Where do you see there are successes/ weaknesses?
3. Who are the key peacebuilding actors in South Sudan?
4. What is the role of South Sudan peace commission?
5. What peacemaking roles does the government expect indigenous authorities (chiefs & elders) to play regarding Justice and reconciliation?
6. What role did local authorities play during the implementation of the CPA?
7. What legal powers does South Sudan constitution provide to Chiefs in terms of administering customary law/justice?
8. What do you think should have been done to build sustainable peace in South Sudan after the signing of the CPA, 2005?
9. Which lessons have been learnt from the previous (post CPA) peacebuilding in terms of justice and reconciliation?
10. After the signing of the Compromise Peace Agreement in August 2015, what are the government's key peacebuilding priorities?
11. What does the government expect the civil society/faith based to do?
12. What does the government expect the UN/international community to do?

b) Role of the United Nations (UN)/ international community

1. Can you tell me about some of your peacebuilding projects in South Sudan?
2. Where do you see there are successes/ weaknesses?
3. What kind of training does the UN provide to build the capacity of local actors?
4. What are challenges the UN faces in peacebuilding in South Sudan?
5. What do you think is the potential of local justice and reconciliation approaches to the resolution of modern conflicts?
6. What contributions do you think chiefs and elders can make in the implementation of the South Sudan Compromise Peace Agreement?

7. What do you think should have been done to build sustainable peace in South Sudan after the signing of the CPA, 2005?
8. Which lessons have been learnt from the previous (post CPA) peacebuilding in terms of justice and reconciliation?
9. After the signing of the Compromise Peace Agreement in August 2015, what do you think should be the government's key peacebuilding priorities?

c) Role of Civil society

1. Can you tell me about some of your peacebuilding projects in South Sudan?
2. Where do you see there are successes/ weaknesses?
3. What methods did/do you use?
4. Who are the key peacebuilding actors in South Sudan?
5. What peacebuilding roles do you think local authorities can play in a post-conflict setting?
6. What peacebuilding relations exist between local institutions and actors and other civil society organizations?
7. What contributions do you think chiefs and elders can make in the implementation of the South Sudan Compromise Peace Agreement?
8. What legal powers does South Sudan constitution provide to Chiefs in terms of administering justice/customary law?
9. Which lessons have been learnt from the previous (post CPA) peacebuilding in terms of justice and reconciliation?
10. After the signing of the Compromise Peace Agreement in August 2015, what do you think should be the government's key peacebuilding priorities?
11. What do you think the Un/internationals should do to build peace in South Sudan?

Appendix 4: List of interviews

S/N	Interview Code & Dates	Gender	Locations
1	KI 1: 20/1/2016	Male	Nairobi
2	KI 2: 23/1/2016	Male	IDP/PoCs- Juba
3	KI 3: 25/2/2016	Male	Juba
4	KI 4: 5/3/2016	Male	Juba
5	KI 5: 27/1/2016	Male	Nairobi-Kenya
6	KI 6: 4/2/2016	Male	Juba
7	KI 15: 18/6/2016	Male	Uganda
8	KI 29: 19/2/2016	Female	Agok/Abyei
9	KI 26:14/3/2016	Male	Juba
10	KI 16: 19/6/2016	Male	Juba
11	KI 34: 14/3/2016	Female	Juba
12	KI 18: 11/3/2016	Male	Juba
13	KI 25: 27/2/2016	Male	Juba
14	KI 7: 4/2/2016	Male	Juba
15	KI 31:10/2/16	Male	Wau
16	KI 27: 7/3/16	Male	Juba
17	KI 30: 9/3/16	Male	Juba
18	KI 41:17/11/16	Female	South Africa

19	KI 42: 2/12/16	Male	South Africa
20	KI 13: 8/1/2016	Male	Juba
21	KI 3:27/2/16	Male	IDP/PoCs -Juba
22	KI 16:19/6/16	Male	Mayen Abun
23	KI 10: 7/2/16	Male	Juba
24	KI 4: 5/3/2016	Female	Juba
25	KI 5: 20/2/2016	Female	Agok/Abyei
26	KI 24:2/3/2016	Female	Juba
27	KI 40: 15/6/2016	Female	Wau
28	KI 6: 4/2/2016	Female	
29	KI 29:19/2/2016	Female	Agok/Abyei
30	KI 9: 7/2/2016	Male	Juba
31	(KI 12:12/2/2016	Male	UK
32	KI 14: 19/2/2016	Male	Abyei
33	KI 38: 16/3/2016	Female	Juba
34	KI 28: 14/3/2016	Male	
35	KI 21: 22/6/2016	Male	IDP/PoCs/Juba
36	KI 13: 4/2/2016	Male	Juba
37	KI 17: 12/2/2016	Male	
38	KI 39: 16/3/2016	Male	Juba

39	KI 22: 20/2/2016	Female	Mayen Abun
40	KI 32: 15/3/2016	Male	Juba
41	KI 33: 22/2/2016	Male	Wau
42	KI 34: 14/3/2016	Female	Juba
43	KI:35: 8/3/2016	Female	Juba

Appendix 5: Thesis Planner 2014-2018

WORK PLAN FOR PHD STUDY 2014-2018													
Activity	Location	J A N	F E B	M A R	A P R	M A Y	J U N	J U L	A U G	S E P	O C T	N O V	D E C
2014													
Graduate School: Modules 2 & 4 second semester	Bradford	x	x	x	x	x							
Study trip to Northern Ireland	Northern Ireland					x							
Annual Progress Report	Bradford						x						
Research proposal first draft	Bradford					x							
Research proposal second draft	Bradford						x						
Vacation	South Sudan							x					
Tentative table of content draft	Bradford								x				
Conference	Oxford						x					x	
Conference	Manchester									x			
Conference	Nairobi										x		
Conference	Durham											x	X
Graduate School Modules 1 & 3 first semester	Bradford										x	x	X
2015													
End of Graduate School Modules 1 & 3	Bradford	x											
Writing up & submission of research proposal (module 5)	Bradford		x	x	x	x	x						
Writing up & submission of research paper module 6	Bradford				x	x	x						
Presentation of Module 6	Bradford						x						
First monitoring	Bradford						x						
Literature review Chap 2 draft & submission	Bradford		x	x	x	x	x	x	x				
Second monitoring meeting	Bradford									x			
Vacation	South Sudan							x					
Ethics application & clearance process	Bradford									x			

Chapter 1 draft submission	Bradford												x	
Chapter 2 draft submission	Bradford													x
Corrections of chapters 1 & 2 seen by the supervisor	Bradford												x	x
2016														
Field work	South Sudan	x	x	x	x	x	x							
Conferences	Durham											x		
Adam Curle Symposium	Bradford											x		
Data Analysis & writing	Bradford								x	x	x	x		
Conference	Leeds												x	
Data Analysis & writing	Bradford								x	x	x	x		
Transitional Justice Fellowship in South Africa (Institute for Justice and Reconciliation)-IJR	Cape Town												x	x
Transfer to Writing-Up	Bradford													x
2017														
Submission of draft chapters 1,2 & 3	Bradford	x												
Library Fellowship-Sudan Archive, University of Durham	Durham				x	x	x							
Submission of draft chapters 4 & 5	Bradford						x							
Vacation	Uganda							x						
Conference	Oxford											x		
Submission of draft chapter 6	Bradford									x				
Submission of first full draft	Bradford												x	
Corrections	Bradford													x
2018														
Corrections	Bradford	x	x											
Final submission of the thesis	Bradford			x										

Appendix 6: Fieldwork Plan

Topic: Indigenising Peacebuilding in South Sudan? A Case of Transitional Justice & Reconciliation

Research questions	Objectives	Required data I hope to find	Respondents	Who gives the required data	Who doesn't give the required data	Remarks

<p>What is the potential utility of indigenous approaches to the resolution of modern conflicts in South Sudan?</p> <ul style="list-style-type: none"> Which are the cultural institutions of peacemaking in South Sudan, and what are the methods they apply? What examples of justice and reconciliation have been implemented at different points in the past (colonial period, Sudan's post-independence period 1956-1982 and during the SPLM/A war 1983-2005) among the Dinkas/Nuers? What were the outcomes of the implemented programmes? 	<p>To determine the relevance and potential usefulness of indigenous mechanisms to modern conflicts in South Sudan.</p> <p>To identify indigenous peacemaking institutions and the methods they use in South Sudan</p> <p>To find out examples of justice and reconciliation that have been implemented at different historical periods.</p> <p>To find out the outcomes of the implemented programme</p>	<p>I will need data which are qualitative in nature. I hope to obtain them from participants' views, opinions, perceptions, personal and experiences about indigenous mechanisms of peacebuilding.</p> <p>Direct observation will also help me to understand nonverbal information as they surface during the study.</p> <p>Data will also come from the analysis of documents; government's publications, early research, dissertations, journal articles, books and Maps among others.</p>	<p>I propose a sample size of 30 -35 participants who are comprised of the following categories: Indigenous authorities (Dinka & Nuer chiefs and elders), staff from government's peacebuilding institutions; UN staff, IGAD mediators; civil society groups, faith based, experts, academics, Development Corporation partners, women and youth</p>	<p>Chiefs & elders, women, civil society, govt. academics & experts</p>	<p>UN and international partners</p>	<p>Generally, all the selected research participants will provide the required data. However, some questions will be better answered by certain categories of participants. For example, questions that pertain to the inner working of indigenous mechanisms are better answered by traditional authorities.</p>
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<ul style="list-style-type: none"> • What has been happening in terms of justice and reconciliation from 2005-2015? • What roles have traditional leaders played in administering justice and reconciliation after violent conflicts? • Are these roles still capable of serving the same purposes they once did? • Who are the key peacebuilding institutions and actors, their roles and the methods • What are the aims and benefits of indigenous peacemaking approaches? 	<p>To ascertain any local justice and reconciliation efforts that have been carried out between 2005-2015</p> <p>To find out the roles traditional authorities have played in local settings in administering justice and reconciliation after violent conflicts</p> <p>To determine whether these roles are still capable of serving the same purpose they once did.</p> <p>To identify key indigenous peacebuilding institutions, actors, their roles and the methods they use in South Sudan</p> <p>To determine the aims and benefits of indigenous peacemaking mechanisms</p>	<p>local mediation initiatives to resolve intra and inter-ethnic conflict, peace and reconciliation conferences</p> <p>local mediation initiatives and intra and inter-ethnic peace and reconciliation conferences, administering local justice</p> <p>They still serve their purposes but there are many challenges that undermine these efforts</p> <p>The institutions and actors are likely to be; Chiefs, council of elders, religious authorities, Diviners, fortune tellers, rainmakers and the methods they use are; adjudication, mediation, rituals etc</p> <p>Presumably they include; delivering justice, repair of damages caused to human lives</p>		<p>Traditional authorities, govts, civil society, NGOs, chiefs, women and youth, academics, UN agencies and other international partners</p> <p>Governments, civil society, NGOs, chiefs, women</p>	<p>IGAD mediators and other international partners</p>	<p>Indigenous authorities and civil society will provide the required data as main actors in constructing those institutions and from experiences. Data will also come from government's peacebuilding commission and ministry of culture. Academics and experts will provide information based on empirical research evidence.</p>
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<ul style="list-style-type: none"> What types of conflicts were settled by indigenous methods? 	<p>To determine the types and levels of conflicts being settled by indigenous approaches.</p>	<p>and property (accountability) repair of broken relationships, fostering peaceful co-existence (reconciliation) creating fear in offenders (deterrence). Participants will tell when these occur and other benefits prioritized by them.</p> <p>I presume they include; Land & property conflicts, family and marriage disputes, cattle raiding, thefts, witchcrafts, sorcery, homicide, blood feuds & revenge. Again, participants may confirm and inform of what they know and think.</p>		<p>Chiefs & elders, women, govt, academics & experts</p> <p>Chiefs, elders, some international partners women, local civil society, academics, experts, government and some youth</p>	<p>UN and some international partners</p>	<p>At least all the selected research participants will provide data based either on their experiences, knowledge and/or their opinions.</p>
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<ul style="list-style-type: none"> What are the root causes of the current conflict in South Sudan? 	To find out the immediate and the underlying root causes of the internal armed conflicts in South Sudan.	<p>These may include; Violent power struggle among politicians, lack of reforms in the army, legal and security sectors, failure of the government to provide the expected services and peace dividends, perceived unequal distribution of power and resources, lack of inclusive political participation, alleged corruption, tribalism and nepotism in public services and institutions, unaddressed war time grievances among communities,</p> <p>Proliferations of small arms and light weapons in the hands of and militarization of civilians, land & property disputes, failure of the international community to properly implement the Comprehensive Peace Agreement (CPA), and Cattle raiding,</p>		Governments, civil society, NGOs, chiefs, women, youth UN, IGAD mediators, Dev. partners Chiefs & elders, women, academics, experts and IGAD mediators	Non	At least all the selected research participants will provide data based either on their experiences, knowledge and/or their opinions on the causes of the current conflicts in South Sudan.

<ul style="list-style-type: none"> What are the strengths and weaknesses of indigenous approaches to post-conflict justice and reconciliation? 	To identify the strengths and weaknesses of indigenous peacemaking approaches	<p>Strengths:</p> <p>Inclusive and participatory, open & transparent, cost effective, restorative in nature, legitimacy & ownership by community, leads to healing & reconciliation</p> <p>Weaknesses:</p> <p>Male dominated, limited sphere of applicability, contradicts basic standards of human rights, preservation of status quo, its supportive socio-cultural environments could be washed away by war</p>		All the participants	Non	At least all the selected research participants will provide data based either on their experiences with indigenous approaches, knowledge and/or their opinions on their strengths and weaknesses
<ul style="list-style-type: none"> What are the indigenous justice and reconciliation mechanisms used by the Dinka and the Nuer? 	To identify the past and current indigenous justice and reconciliation mechanisms used by the Dinka and the Nuer in South Sudan after mass atrocities	<p>Sources of the law: Social & cultural values, world view & belief systems and importance of human life</p> <p>Relationships:</p> <p>importance of co-existence and Community as a structure of support and source of identity</p> <p>Rituals: Symbolism, cleansing. reintegration performances and</p>		Dinka & Nuer chiefs, elders and women, govt, experts and academics	UN, IGAD Mediators and other international partners	International NGOs IGAD mediators and the UN are unlikely to provide the required data as the practices are locally inspired and are constructed and administered by indigenous authorities.

		<p>to show if there are records of major justice & reconciliation practices</p> <p>Others:</p> <p>Apologies, restitution, compensation & amnesty</p>				
<ul style="list-style-type: none"> To what extent can the Dinka and the Nuer justice and reconciliation mechanisms be applied to post conflict peacebuilding? Do the dominant Western liberal peace approaches leave room for local versions of restitution? To what extent were the indigenous initiatives included in the mediation and negotiations of the CPA and ARCSS? 	<p>To determine the extent to which the Dinka and the Nuer indigenous justice and reconciliation mechanisms can be applied or not to the current conflict in South Sudan</p> <p>To find out whether liberal peace model leaves room for local versions of restitution.</p>	<p>More relevant to ethnic, inter-communal and communal levels of the conflicts and possibly civil wars with multiple actors involved (hybrid violent conflicts), and in areas where there is absence of state mechanisms.</p> <p>Indigenous versions of compensation and restitution are relegated by the dominant model, not recognized and not incorporated in peacebuilding programming and interventions policies.</p> <p>The answer is likely to indicated lack of inclusion or simply invited as observers.</p>		Dinka & Nuer chiefs & elders, govt, local CSOs, academics and experts, UN, IGAD mediators and other international partners	Non	Indigenous authorities, women, local CSOs, government, academics and experts, UN IGAD mediators and other international partners will provide the needed data based on their knowledge about the mechanisms, experiences and opinions.

<ul style="list-style-type: none"> What are the limits of indigenous peacemaking procedures 	To find out challenges facing indigenous peacebuilding in South Sudan	The dominance of liberal peace model, relegation of the role of indigenous approaches, co-option by CSOs who are agents of the international liberal peace, state interference in indigenous justice processes, politicization of indigenous institutions and actors, lack of sufficient empirical research to show the effectiveness of indigenous approaches modern conflicts		All the participants	Non	All the selected research participants will provide the required data. However, indigenous authorities, local CSOs, women and youth, govt, academics and experts are well placed to provide information from experiential perspectives and expert knowledge as they understand the internal dynamics, weaknesses, strengths as well as the political and cultural contexts of these approaches

<ul style="list-style-type: none"> What are stakeholders' perceptions (local and international) about the application of indigenous techniques to transitional justice and reconciliation? 	<p>To determine opinions of peacebuilding stakeholders about the potential of indigenous approaches to transitional justice and reconciliation in South Sudan.</p>	<p>Gender insensitive, contradicts human rights, rigid and maintains status quo, ancient and archaic, needs to be codified, slow and bias, lack capacity to handle cases of war crimes, crimes against humanity and genocide and thus, can't be applied to modern conflicts.</p> <p>However, some participants are likely to talk in favour of it being inclusive & participatory, based on local resources that people understand, restorative, legitimate and owned by the community and thus, can complement the liberal peace model in environments of hybrid political orders.</p>		<p>Some local CSOs, some academics and experts, some women and govt staff, International CSOs, UN, youth, some academics and experts, some women and govt staff.</p> <p>Traditional authorities, some government officials, women, youth and local civil society,</p>	Non	<p>The international and local NGOs, government, women and some academics, professionals and experts who promote the liberal peace model of democracy and rule of law are unlikely to give answers that promote indigenous approaches.</p> <p>However, given the recent upsurge of interests among some academics and practitioners in promoting indigenous approaches, it is likely some of them together with indigenous authorities and faith based groups may give favourable</p>
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						answers about the relevance and role of indigenous approaches for possible application to civil war situation.
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Bibliography

- Alai, C. (2012) Transitional Justice and Human Rights in Africa. In Okello, M. C., Dolan, C., Whande, U., Mncwabe, N., Onegi, L., and S., O. (editors) *Where Law Meets Reality: Forging African Transitional Justice*. Cape Town, SA: Pambazuka Press. 124-130.
- Alie, J. A. D. (2008) Reconciliation and traditional justice: tradition-based practices of the Kpaa Mende in Sierra Leone. In Huyse, L. and Salter, M. (editors) *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences*. Stockolm, Sweden: International IDEA. 123-146.
- Allen, T. and Macdonald, A. (2013) Post- Conflict Traditional Justice: A Critical Overview. *The Justice and Security Research Programme (JSRP)* (3), 27. http://eprints.lse.ac.uk/56357/1/JSRP_Paper3_Post-conflict_traditional_justice_Allen_Macdonald_2013.pdf
- Andrews, T. (2012) What is Social Constructionism? *Grounded Theory Review: An International Journal* 11 (1), 1-8.
- Antwi-Boateng, O. and O' Mahony, G. M. (2008) A Framework for the Analysis of Peace Agreements and Lessons Learned: The case of the Sudanese Comprehensive Peace Agreement. *Politics & Policy* 36 (1), 132-178.
- ARCSS, I. (2015) *Agreement on the Resolution of the Conflict in the Republic of South Sudan* (ARCSS). (Igad), I. A. O. D. Addis Ababa, Ethiopia:
- Arthur, D. D., Issifu, A. K. and Marfo, F. (2015) An Analysis of the Influence of Ubuntu Principle on the South Africa Peacebuilding Process. *Journal of Global Peace and Conflict* 3 (2), 63-77.
- Ashworth, J. (2014) *The Voice of the Voiceless: The Role of the Church in the Sudanese Civil war 1983-2005*. Nairobi, Kenya: Paulines Publications Africa.
- AUCISS, A. U. (2014) *Final Report of the African Union Commission of Inquiry on South Sudan*. Addis Ababa, Ethiopia: African Union (AU).
- Balati, E. (2015) A Truth Commission to Boost Reconcilitaion in South Sudan.
- Barnes, C. (2005) Weaving the Web: Civil-Society Roles in Working with Conflict and Building Peace. In Tongeren Et Al (editor) *People Building Peace II Successful Stories of Civil Society*. Boulder, USA: Lynne Rienner Publishers, Inc. 7-24.
- Bashir, M. O. (1984) "Ethnicity, Regionalism and national Cohesion in Sudan". *The Sudan: Ethnicity and national Cohesion*. Bayreuth University, Germany: African Studies Series.
- Beitzel, T. and Castle, T. (2013) Achieveing Justice Through the International Criminal Court in Northern Uganda: Is Indigenous/Restorative Justice a Better Approach? *International Criminal Justice Review* 23 (1), 41-55.
- Bellamy, A. J., Williams, P. D. and Griffin, S. (2010) *Understanding Peacekeeping*. Second edition. Cambridge, UK: Polity Press.
- Bercovitch, J. and Jackson, R. (2009) *Conflict Resolution in the Twenty-first Century: Principles, Methods, and Approaches*. Ann Arbor: The University of Michigan Press.
- Boege, V. (2006) Traditional Approaches to Conflict Transfromation-Potentials and Limits. *Berghof Handbook for Conffflict Transformation*.
- Boege, V. (2011) Potential and Limits of Traditional Approaches in Peacebuilding. In Beatrix, M. F. and Hans, J. G. (editors) *Advancing Conflict Transformation. The*

- Berghof Handbook II*. Opladen and Farmington Hills, MI: Barbara Budrich. 431-457.
- Boutros-Ghali, B. (1992) *An Agenda for Peace: Preventive diplomacy, peacemaking and peace-keeping*. New York, USA: United Nations.
- Boyle, K. (2005) The Institutional Framework for Human Rights: The UN High Commissioner for Human Rights. In Smith, R. K. M. and Anker, C. (editors) *The Essentials of Human Rights*. UK: Hodder Arnold.
- Bradbury et al (2006) *Local Peace Processes in Sudan: A Baseline Study*. Rift Valley Institute:
- Braun, V. and Clarke, V. (2006) Using Thematic Analysis in Psychology. *Qualitative Research In Psychology* 3 (2), 77-101.
- Brock-Utne, B. (2001) Indigenous Conflict Resolution in Africa. In *Week-end Seminar on Indigenous Solutions to Conflicts*. University of Oslo, Institute of Educational Research. 1-16.
- Brouneus, K. (2003) *Reconciliation Theory and Practice for Development Cooperation*. Sweden: SIDA.
- Call, C. T. (2008) Ending Wars, Building Peace. In Call, C. T. and Wyeth, V. (editors) *Building State to Build Peace*. Colorado, USA: Lynne Rienner Publishers, Inc. 22.
- Cheeseman, N., Anderson, D. M. and Scheibler, A. (2015) *Routledge Handbook of African Politics*. London: Routledge-Taylor and Francis Group.
- Clark, P. (2014) Negotiating Reconciliation in Rwanda: Popular Challenges to the Official Discourse of Post-Genocide National Unity. *Journal of Intervention and Statebuilding* 8 (4), 18.
- Collins, R. O. (2008) *A History of Modern Sudan*. Cambridge, UK: Cambridge University Press.
- Copnall, J. (2014) *A Poisonous thorn in our hearts: Sudan and South Sudan's bitter and incomplete divorce*. London: Hurst & Company.
- Creswell, W. J. (2007) *Qualitative Inquiry & Research Design: Choosing Among Five Approaches*. Second edition. UK: Sage Publications.
- Crotty, M. (1998) *The Foundations of Social Research: Meaning and Perspective in the Research Process*. USA: SAGE Publications.
- Daley, P. (2006) Challenges to Peace: Conflict Resolution in the Great Lakes Region of Africa. *Third World Quarterly* 27 (2), 303-319.
- Deng, F. M. (1987) *Tradition and Modernization: A Challenge for Law among the Dinka of Sudan*. New Haven, USA: Yale University Press.
- Descombe, M. (2003) *The Good Research Guide for Small-Scale Social Research Project*. England: Open University Press.
- Duany, J. A. (2003) People-to-People Peacemaking: A Local Solution to Local Problems. In Bamat, T. and Cejka, M. A. (editors) *Artisans Of Peace: Grassroots Peacemaking among Christian Communities*. New York, USA: Orbis Books.
- Evans-Pritchard, E. E. (1940) *The Nuer: A description of the modes of livelihood and political institutions of a Nilotic people*. Oxford, UK: Oxford University Press.
- Fischer, R. (2012) *The Peace of Westphalia and the World State: A case for causal pluralism in International Relations*. Master of Arts. Central European University.
- Fisher, S., Ludin, J., Williams, S., Abdi, D. I., Smith, R. and Williams, S. (2000) *Walking With Conflict: Skills & Strategies For Action*. London: Zed Books Ltd.

- Francis, D. J. (2012) Introduction: When War Ends: Building Peace in Divided Communities - Core Issues. In Francis, D. J. (editor) *When War Ends: Building Peace in Divided Communities*. Surrey, UK: Ashgate Publishing Limited. 1-25.
- Freeman, M. and Hayner, P. B. (2003) The Truth Commissions of South Africa and Guatemala. In Bloomfield, D., Barnes, T., and Huyse, L. (editors) *Reconciliation After Violent Conflict: A handbook*. Stockholm, Sweden: International Institute for Democracy and Electoral Assistance.
- Gado, Z. M. B. (2013) *Conflict Resolution and Reconciliation in Sudan: Inter-tribal Reconciliation Conferences in South Darfur State up to 2009*. Degree of Doctor of Philosophy. University of Bradford.
- Gawerc, M. I. (2006) Peacebuilding: Theoretical and Concrete Perspectives. *Peace & Change* 31 (4), 435-478.
- Gergen, K. J. (1985) The Social Constructionist Movement in Modern Psychology. *American Psychologist* 40 (3).
- Giampapa, F. (2011) The Politics of "Being and Becoming" a Researcher: Identity, Power and Negotiating in the Field. *Journal of Language, Identity, and Education* 10, 132-144.
- Goodale, M. (2006) Ethical theory as social practice. *American Anthropologist* 108, 25-37.
- Goodhart, M. (2005) Theories and critiques of human rights: Universalism. In Smith, R. K. M. and Anker, C. (editors) *The essentials of Human Rights*. UK: Hodder Arnold.
- Graybill, L. S. (2017) *Religion, Tradition, and Restorative Justice in Sierra Leone*. Indiana, USA: University of Notre Dame Press.
- Hamber, B. and Kelly, G. (2004) *A working Definition of Reconciliation*. Belfast, UK:
- Harris, D. (2013) *Sierra Leone: A Political History*. London, UK: C. Hurst & Co. (Publishers) Ltd.
- Hayner, P. B. (1996) Commissioning the Truth: further research questions. *Third World Quarterly* 17 (1), 19-29.
- Hayner, P. B. (2002) *Unspeakable Truths: Facing the Challenge of Truth Commissions*. New York, USA: Routledge.
- Hoehne, M. V. (2008) Traditional Authorities and Local Government in South Sudan. Max Planck Institute for Social Anthropology, Halle/Saale, Germany.
- Howell, P. P. (1954) *A Manual of Nuer Law: Being an account of Customary Law, its Evolution and Development in the Courts established by the Sudan Government*. London, UK: Oxford University Press.
- Hughes, C. (2009) "We just take what they offer": Community Empowerment in Post-War Timor-Leste. In Newman, E., Paris, R., and Richmond, O. P. (editors) *New Perspectives in Liberal Peace*. Tokyo: United Nations University Press.
- Hughes, C. (2013) Friction, Good Governance and the Poor; Cases from Cambodia. *International Peacekeeping* 20 (2), 144-158.
- Hutchinson, S. E. (2001) A Curse from God? Religious and political dimensions of the post-1991 rise of ethnic violence in South Sudan. *The Journal of Modern African Studies* 39 (2), 307-331.
- Hutchinson, S. E. and Pendle, N. R. (2015) Violence, Legitimacy, and Prophecy: Nuer struggles with Uncertainty in South Sudan. *Journal of the American Ethnological Society* 42 (3), 415-430.
- Huyse, L. (2008) *Introduction: tradition-based approaches in peacemaking, transitional justice and reconciliation policies*. Stockholm, Sweden: International Institute for

Democracy and Electoral Assistance.
http://www.idea.int/publications/traditional_justice/upload/Chapter_1_Introduction_tradition-based_approaches_in_peacemaking_transitional_justice_and_reconciliation_policies.pdf Accessed 14/02/15.

- Huyse, L. and Salter, M. (editors) (2008) *Traditional Justice and Reconciliation after Violent Conflict: Learning From African Experiences*. Stromsborg, Sweden: International IDEA.
- Igreja, V. and Dias-Lambranca, B. (2008) Restorative Justice and the role of Magamba spirits in post-civil war Gorongosa, central Mozambique. In Huyse, L. and Salter, M. (editors) *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences*. Stockholm, Sweden: International Institute for Democracy and Electoral Assistance. 61-83.
- Ingelaere, B. (2008) The Gacaca courts in Rwanda. In Huyse, L. and Salter, M. (editors) *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences*. Stockholm, Sweden: International Institute for Democracy and Electoral Assistance. 25-59.
- Jabri, V. (2013) Peacebuilding, the local and the international: a colonial or a post colonial rationality? 1 (1), 3-16.
- Jackson, P. (2009) 'Negotiating with Ghosts': Religion, Conflict and Peace in Northern Uganda. *The Round Table* 98 (402), 319-331.
- Jenkins, R. (2013) *Peace Building: From Concept to Commission*. Abingdon, UK: Routledge.
- Johnson, D. H. (1986) Judicial Regulation and Administrative Control: Customary Law and the Nuer. *Journal of African History* 27, 59-78.
- Johnson, D. H. (1994) *Nuer Prophets: A history of Prophecy from the Upper Nile in the Nineteenth and Twentieth Centuries*. USA: Oxford University Press.
- Johnson, D. H. (2003) *The Root Causes of Sudan's Civil Wars*. Indiana, USA: Indiana University Press.
- Johnson, D. H. (2011) *The Root Causes of Sudan's Civil Wars: Peace or Truce*. Revised, edition. Kampala, Uganda: Fountain Publishers.
- Johnson, D. H. (2014a) *Briefing: The Crises in South Sudan*. African Affairs 113/451, Oxford University Press.
- Johnson, D. H. (2014b) South Sudan's Experience at Peacemaking: The 22nd Annual Ghandi Peace Festival. In *Bertrand Russel Peace Lecture: Symposium on Conflict and Peacebuilding in South Sudan*. MacMaster University, Hamilton, Ontario, Canada. 24.
- Johnson, D. H. (2016a) *South Sudan: A New History for a New Nation*. Ohio, USA: Ohio University Press.
- Johnson, H. F. (2016b) *South Sudan: The Untold Story From Independence to Civil War*. London: I.B.Tauris & Co. Ltd.
- Jok, A. A., Leith, R. A. and B.Hum, C. V. (2004) *A study of Customary Law in Contemporary Southern Sudan*. Rumbek, South Sudan: World Vision International.
- Kabbede, G. (1997) Sudan: The North-South Conflict in Historical Perspective: Contributions in Black Studies. *A Journal of African and Afro-American Studies* 15 (1), 16-31.

- Kappler, S. and Richmond, O. (2011) Peacebuilding in Bosnia and Herzegovina: Resistance and Emancipation? *Security Dialogue* 43 (3).
- Kariuki, F. (2015) Conflict Resolution by Elders in Africa: Successes, Challenges and Opportunities. *Alternative Dispute Resolution*, 1-17.
- Kerr, R. and Mobekk, E. (2007) *Justice & Peace: Seeking Accountability After War*. Cambridge, UK: Polity Press.
- Komakech, L. (2012) Traditional Justice as a form of adjudication in Uganda. In Okello, M. C., Dolan, C., Whande, U., Mncwabe, N., Onegi, L., and Oola, S. (editors) *Where Law Meets Reality: Forging African Transitional Justice*. Cape Town SA: Pambazuka Press. 64-79.
- Kumar, R. (2011) *Research Methodology: A Step-by-Step Guide for Beginners*. Third edition. London: SAGE Publications Ltd.
- Lambach, D. (2007) *Oligopolis of Violence in Post-Conflict Societies*. Germany: GIGA German Institute of Global and Area Studies.
- Lapan, S. D., Quartaroli, M. T. and Riemer, F. J. (editors) (2012) *Qualitative Research: An Introduction to Methods and Designs*. USA: Jossey-Bass.
- Lappin, R. and Harris, D. (2010) The Liberian Truth and Reconciliation Commission: Reconciling or Redividing Liberia? *Alternatives: Turkish Journal of International Relations* 9 (1), 11.
- Leach, J. D. (2013) *War and Politics in Sudan: Cultural Identities and the Challenges of the Peace Process*. New York: I.B. Tauris & Co Ltd.
- Lederach, J. P. (1997) *Building Peace: Sustainable Reconciliation in Divided Societies*. Washington DC: United States Institute of Peace.
- Leedy, P. D. and Ormrod, J. E. (2013) *Practical Research: Planning and Design*. 10th edition. Boston, USA: Pearson Education, Inc.
- Leonardi, C. (2005) *Knowing Authority: Colonial Governance and Local Community in Equatoria Province, Sudan 1900-1956*. Doctor of Philosophy. University of Durham.
- Leonardi, C. (2007) Violence, Sacrifice and Chiefship in Central Equatoria, Southern Sudan. *Africa* 77 (04), 558.
- Leonardi, C. (2015) *Dealing with Government in South Sudan: Histories of Chiefship, Community and State*. UK: James Curry.
- Leonardi, C., Moro, L. N., Santschi, M. and Isser, D. H. (2010) *Local Justice in Southern Sudan*. United States Institute of Peace.
- LeRiche, M. and Arnold, M. (2012) *South Sudan: From Revolution to Independence*. UK: C. Hurst & Co. Ltd.
- Lesch, A. M. (1998) *The Sudan: Contested National Identities*. UK: James Currey Ltd.
- Mac Ginty, R. (2008a) Indigenous Peacemaking Versus the Liberal Peace. *Cooperation and Conflict* 43 (2), 139-163.
- Mac Ginty, R. (2008b) Traditional and Indigenous Approaches to Peacemaking. In Darby, J. and Mac Ginty, R. (editors) *Contemporary Peacemaking: Conflict, Peace Processes and Post-War Reconstruction*. Second edition. Basingstoke, UK: Palgrave Macmillan. 120-130.
- Mac Ginty, R. and Richmond, O. P. (2013) The Local Turn in Peacebuilding: a critical agenda for peace. *Third World Quarterly* 34 (5), 763-783.
- Malan, J. (1997) *Conflict Resolution Wisdom from Africa*. Durban, South Africa: African Center for the Constructive Resolution of Disputes (ACCORD).

- Malan, J. (2008) Understanding Transitional Justice in Africa. In Francis, D. J. (editor) *Peace & Conflict in Africa*. London, UK: Zed Books Ltd. 133-147.
- Malwal, B. (2005) *Sudan's Latest Peace Agreement: An Accord that is Neither Fair Nor Comprehensive-A Critique*. Omdurman, Sudan: Abdel Karim Mirghani Cultural Centre.
- Manning, R. E. (2009) *The Landscape of Local Authority in Sierra Leone: How Traditional and Modern Justice Systems interact*. USA: World Bank.
- Masabo, C. J. (2013) Discerning for Peace in Africa: The Sudan Civil Wars and Peace Processes 1955-2013. *Hekima Review*, 137-150.
https://works.bepress.com/conrad_masabo/16/
- Mbiti, J. S. (1991) *Introduction to African Religion*. South Africa: Heinemann.
- Moore, T. S., Lapan, S. D. and Quartaroli, M. T. (2012) Case Study Research. In Lapan, S. D., Quartaroli, M. T., and Riemer, F. J. (editors) *Qualitative Research: An Introduction to Methods and Designs*. Jossey-Bass: 243-270.
- Murithi, T. (2005) Traditional values supporting human rights: Ubuntu and human rights. In Smith, R. K. M. and Anker, C. (editors) *The essentials of Human Rights*. UK: Hodder Arnold.
- Murithi, T. (2006) Practical Peacemaking Wisdom from Africa: Reflections on Ubuntu. *The Journal of Pan African Studies* 1 (4), 25-34.
- Murithi, T. (2008) African Indigenous and Endogenous Approaches to Peace and Conflict Resolution. In Francis, D. J. (editor) *Peace & Conflict in Africa*. London, UK: Zed Books Ltd.
- Murithi, T. (2012) Towards African models of transitional justice. In Okello, M. C., Dolan, C., Whande, U., Mncwabe, N., Onegi, L., and Oola, S. (editors) *Where Law Meets Reality: Forging African Transitional Justice*. Cape Town, SA: Pambazuka Press. 200-217.
- Myers, L. J. and Shinn, D. (2010) Appreciating traditional forms of healing conflict in Africa and the World. *Black Diaspora Review* 2 (1), 2-14.
- Nabudere, D. W. (2004) Ubuntu. In Villa-Vicencio, C. and Doxtader, E. (editors) *Pieces Of The Puzzle: Keywords On Reconciliation and Transitional Justice*. Cape Town, South Africa: Institute for Justice and Reconciliation. 10-16.
- Nantulya, P. (2004) Sudan: Causes of Conflict, and the Peace Process. *Electronic Briefing Paper*.
- Newman, E. (2009) "Liberal" peacebuilding debates. In Newman, E., Paris, R., and Richmond, O. P. (editors) *New Perspective on Liberal Peacebuilding*. New York, USA: United Nations University Press. 26-53.
- Newman, E., Paris, R. and Richmond, O. P. (2009) Introduction. In Newman, E., Paris, R., and Richmond, O. P. (editors) *New Perspectives on Liberal Peacebuilding*. Tokyo: United Nations University Press. 3-25.
- Novak, A. (2015) *The International Criminal Court: An Introduction*. Switzerland: Springer International Publishing.
- OCHA, P. f. h. (2006) *The History of Sudan: Independence and The First Civil War*.
- Ogora, L. O. (2009) *Moving Forward: Traditional justice and victim participation in Northern Uganda*. Cape Town, South Africa: Institute For Justice and Reconciliation, Africa Programme.
- Omeje, K. C. (2008) Understanding Conflict Resolution in Africa. In Francis, D. J. (editor) *Peace & Conflict in Africa*. London, UK: Zed Books Ltd. 68-91.

- Orvis, S. (2001) Civil Society in Africa or African Civil Society? *Journal of Asian and African Studies* 36 (1), 19.
- Paris, R. (2004) *At War's End: Building Peace After Civil Conflict*. Cambridge, UK: Cambridge University Press.
- Ramsbotham, O., Woodhouse, T. and Miall, H. (2011) *Contemporary Conflict Resolution: The Prevention, Management and Transformation of deadly Conflicts*. Third edition. Cambridge, UK: Polity Press.
- Redekop, V. N. (2007) Reconciling Nuers with Dinkas: A Girardian Approach to Conflict Resolution. *Religion* 37 (1), 64-84.
- Richmond, O. P. (2002) *Maintaining Order, Making Peace*. Basingstoke, USA: Palgrave.
- Robson, C. (2011) *Real World Research*. Chichester, UK: Wiley.
- Rolandsen, O. H. and Daly, M. W. (2016) *A History of South Sudan: From Slavery to Independence*. United Kingdom: Cambridge University Press.
- Rose, G. (1997) Situating Knowledges: Positionalities, Reflexivities and other Tactics. *Progress in Human Geography* 21 (3), 305-320.
- Rukuni, T., Machingambi, Z., Musingafi, M. C. C. and Kaseke, K. E. (2015) The Role of Traditional Leadership in Conflict Resolution and Peace Building in Zimbabwean Rural Communities: The Case of Bikita District. *Public Policy and Administration Research* 5 (3), 75-80.
- Schensul, J. J. (2012) Methodology, Methods, and Tools in Qualitative Research. In Lapan, S. D., Quartaroli, M. T., and Riemer, F. J. (editors) *Qualitative Research: An Introduction to Methods and Designs*. San Francisco, USA: Jossey-Bass. 69-103.
- Schierenbeck, I. (2015) Beyond the local turn divide: lessons learnt, relearned and unlearned. *Third World Quarterly* 36 (5), 12.
- Shaw, R. and Waldorf, L. (2010) Introduction: Localizing Transitional Justice. In Shaw, R., Waldorf, L., and Hazan, P. (editors) *Localizing Transitional Justice: Interventions and Priorities After Mass Violence*. USA: Stanford University Press.
- Sriram, C. L. (2009) Justice as Peace? Liberal Peacebuilding and Strategies of Transitional Justice. In Mac Ginty, R. R., O. P. (editor) *The Liberal Peace and Post-War Reconstruction*. London: Routledge.
- The Mato Oput Project, C. (2009) *Community Perspectives on The Mato Oput Process: A Research Study by the Mato Oput Project*. Gulu University: The Institute for Global Leadership.
- Thomas, E. (2015) *South Sudan: A Slow Liberation*. London: Zed Books.
- Tom, P. (2011) *The Liberal Peace and Post Conflict Peace-building in Africa: Sierra Leone*. Doctor of Philosophy. University of St. Andrews. <http://research-repository-st-andrews.ac.uk>
- Tutu, D. (1999) *No Future Without Forgiveness*. London: Rider, an imprint of Embury Press, Random House.
- UNDP (2016) New Beginnings: A Way Forward for Transitional Justice in South Sudan. *Transitional Justice in South Sudan*. Juba, South Sudan. UNDP South Sudan.
- Verjee, A. (2017) *South Sudan's High Level Revitalization Forum: Identifying conditions for success*. United States Institutes of Peace (USIP).

- Villa-Vicencio, C. (2004) Restorative Justice. In Villa-Vicencio, C. and Doxtadar, E. (editors) *Pieces of the Puzzle: Keywords on Reconciliation and Transitional Justice*. Cape Town, SA: Institute for Justice and Reconciliation. 33-38.
- Villa-Vicencio, C. (2009) *Walk with Us and Listen: Political Reconciliation in Africa*. USA: Georgetown University Press.
- Wachira, G., Kamungi, P. and Sillah, K. (2014) *Stretching The Truth: The Uncertain Promise of TRCs in Africa's Transitional Justice*. Nairobi-Kenya: Nairobi Peace Initiative (NPI)-Africa.
- Waihenya, W. (2006) *The Mediator: Gen. Lazaro Sumbeiywo and the Southern Sudan Peace Process*. Nairobi, Kenya: Kenway Publications.
- Waldorf, L. (2010) "Like Jews Waiting for Jesus": Posthumous Justice in Post-Genocide Rwanda. In Shaw, R., Waldorf, L., and Hazan, P. (editors) *Localizing Transitional Justice: Interventions and Priorities after Mass Violence*. Stanford, California: Stanford University Press. 183-202.
- Wasonga, J. (2009) Rediscovering Mato Oput: The Acholi Justice System and the Conflict in Northern Uganda. *Africa Peace and Conflict Journal* 2 (1), 27-38.
- Wassara, S. S. (2007) *Traditional Mechanisms of Conflict Resolution in Southern Sudan*. Berlin, Germany: Berghof Foundation for Peace Support. <https://www.eisf.eu/wp-content/uploads/2014/09/0979-Wassara-2007-Traditional-Mechanisms-of-CR-in-South-Sudan.pdf> Accessed 14/02/15.
- Yamashita, H. (2014) *Peacebuilding and "Hybrid" Peace*. The National Institute for Defense Studies News.
- Yin, R. K. (2003) *Case Study Research: Design and Methods*. Third edition. London, UK: Sage Publications Ltd.
- Young, J. (2012) *The Fate of Sudan: The Origin and Consequences of a Flawed Peace Process*. London: Zed Books.
- Zehr, H. (2002) *The Little Book of Restorative Justice*. USA: Good Books.
- Zerai, A. (2010) *U.S. Press Representation of the Southern Sudanese Civil War, 1983-2005*. Doctor of Philosophy. The University of New Mexico.